UNIVERSITY OF TORONTO
3 1761 00860167 6

I
(49)

MORALS IN EVOLUTION

Philos
Ethics
H

MORALS IN EVOLUTION

A STUDY IN COMPARATIVE ETHICS

eonard relawney

BY

L. T. HOBHOUSE, D.Litt.

MARTIN WHITE PROFESSOR OF SOCIOLOGY IN THE UNIVERSITY OF LONDON.
LATE FELLOW AND ASSISTANT TUTOR OF CORPUS CHRISTI COLLEGE, OXFORD,
FORMERLY FELLOW OF MERTON COLLEGE

FIFTH EDITION

H22601
20.4.44

NEW YORK
HENRY HOLT AND COMPANY

BJ
1311
H6
1920

PRINTED IN GREAT BRITAIN

PREFACE

THE purpose of the present work is to approach the theory of ethical evolution through a comparative study of rules of conduct and ideals of life. In this branch of evolutionary science theory and fact sometimes tend to fall apart. Hypotheses may be formed by the method of brilliant conjecture without any firm basis in the actual history of the moral consciousness, while that history as revealed in the mass of recorded customs and doctrines concerning conduct sometimes tends to be lost in a mass of anthropological detail wherein it is impossible to see the wood for the trees. The attempt made in these volumes is to ascertain the main features of development, and by piecing them together to present a sketch in which the essentials of the whole process will be depicted in outline.

In this method of handling the subject, no hypothesis as to the causes of evolution is required. Even the hypothesis of evolution itself is not strictly necessary. Our object is to distinguish and classify different forms of ethical ideas — a morphology of ethics comparable to the physical morphology of animals and plants. The results of such a comparative study, if firmly based on recorded facts, would remain standing if the theory of evolution were shattered. At the same time, here as elsewhere, the results of classification when seen in the light of evolutionary theory acquire a wholly new significance and value. They furnish us with a conception of the trend of human development based not on any assumption as to the underlying causes at work, but on a matter-of-fact comparison of the achievements reached at different stages of the process itself.

Little, therefore, will be said here of the psychological forces which underlie the ethical consciousness; little of the sociological and other factors which accelerate or retard development. These lie for the most part outside our immediate province. It is the essential facts of development itself that we are seeking to ascertain. Such an inquiry encounters many difficulties of its own. Vast and complex subjects must be handled with a brevity which to one specially interested in them will appear quite inadequate. The conclusions of a hundred specialisms must be used by one who from the nature of the case cannot himself be a specialist in any of them. Hence the openings alike for error of detail and for disproportion of general handling are great. Nor is it possible to avoid subjects of controversy. For the study of development, the ethics of civilization are not less, but, if anything, more important than those of savagery, and have therefore received closer attention in this work. But the complexities of civilized ethics, interwoven as they are with religious and political doctrines, can only be treated within the limits of a general sketch by keeping strictly to what is distinctive and fundamental in each system, and of this only so much is selected for discussion as is deemed to have a bearing on ethical development. In such selection the general philosophic bias of the inquirer is only too apt to have an influence. Further, it is a part of the plan of the work to estimate critically the position of each system in the line of ethical development, and in such criticism it is still harder to put aside all preconceived opinions. The alternative would be to omit the ethics of Christendom and the problems of modern thought altogether. This I felt would mutilate the inquiry, and I have accordingly endeavoured to treat these subjects precisely on the same footing and in the same spirit as others, that is to say, as phases of development to be critically but quite impartially examined. In the sketch of modern philosophy, however, I have briefly set forth the analysis of the fundamental problems which expresses my own views, and in the final chapter I have drawn some broad conclusions from the general trend of ethical development.

My obligations to other writers are, I hope, adequately acknowledged in detail. Dr. Westermarck's important work on the *Origin and Growth of the Moral Ideas* would have been of immense value to me had it appeared a little earlier. It is particularly satisfactory to me to find that so far as we cover the same field my results generally harmonize with his, and this notwithstanding a material divergence in ethical theory. On almost every page of some of my chapters references to his volume might be added to my footnotes, and with certain questions raised by his inquiry I have dealt in an appendix. I have to thank many friends for advice as to reading on special subjects. Among them I should like to name Mr. Hagberg Wright of the London Library, Mr. Ll. Griffith, and the late Mr. W. T. Arnold. Prof. Vinogradoff and Dr. Estlin Carpenter have most kindly read large portions of the MS., and suggested many valuable criticisms, though of course neither of them is to be held responsible for anything that is here printed. Lastly, I have to thank Dr. Slaughter, Secretary of the Sociological Society, and Miss M. Harris, for undertaking the heavy and responsible task of verifying the references.

L. T. HOBHOUSE.

Wimbledon, June 1906.

PREFACE TO SECOND EDITION

APART from emendations on a few points of detail, to which reviewers or correspondents have kindly drawn my attention, no alterations have been made in this edition. I may take this opportunity of thanking Mr. G. F. Deas for useful information as to the Scottish Marriage Law, and I may perhaps be allowed to add that no greater service can be done to a book of this kind than the pointing out by specialists of errors of commission or omission in their respective provinces.

November 1907.

PREFACE TO THIRD EDITION

For the present edition the whole work has been revised and a good part rewritten. For this purpose I have largely made use of work done by myself in collaboration with Mr. G. C. Wheeler and Mr. M. Ginsberg, and published under the title of *The Material Culture and Social Institutions of the Simpler Peoples*, by Messrs. Chapman & Hall. The numerous references to that work must be taken as so many acknowledgments to my colleagues, and I have further to thank Mr. Ginsberg for help in the verification of references. My thanks are also due to Mr. R. R. Marett for valuable criticisms of the chapters dealing with early religious thought, and to Mr. F. H. Griffith, Mr. S. A. Cook, Dr. Estlin Carpenter and Dr. F. B. Jevons for useful suggestions. Also, since this book was first written, I have had the good fortune to be associated in academic work with Prof. Westermarck, Prof. Seligmann, Dr. Rivers and Dr. Haddon, from all of whom I have learnt something which I trust has contributed to the improvement of the work.

L. T. Hobhouse.

Highgate,
April 1915

NOTE TO FOURTH EDITION

In the last edition of this book, printed during the war, it was pointed out that the account of international ethics, and indeed of the whole development of the humanitarian ideal, was based on the period preceding that catastrophe. No attempt was made at a judgment of the new situations which would have involved present controversy and future speculation rather than recorded history. After eight years it might be expected that the task should be undertaken. But those years have unfortunately served only to darken the clouds which hang over our whole civilisation. The one thing clear is the magnitude of the breach. Any discussion of the possibility of saving the civilised order from international and civil anarchy would be worthless without an elaborate analysis of post-war conditions which could not be attempted as an adjunct to a work like the present. I have therefore left these chapters unaltered and have restricted emendations to one or two minor points in other parts.

L. T. H.

April, 1923.

CONTENTS

PART I

THE STANDARD

CHAP. PAGE

I THE SCOPE AND METHOD OF COMPARATIVE ETHICS 1

II FORMS OF SOCIAL ORGANIZATION 38

III LAW AND JUSTICE 70

IV MARRIAGE AND THE POSITION OF WOMEN . . 132

V WOMEN IN THE CIVILIZED WORLD 179

VI THE RELATIONS BETWEEN COMMUNITIES . . 233

VII CLASS RELATIONS 270

VIII PROPERTY AND POVERTY 318

SUMMARY 354

PART II

THE BASIS

I THE EARLY PHASES OF THOUGHT 365

II ETHICAL CONCEPTIONS IN EARLY THOUGHT . . 419

III THE WORLD AND THE SPIRIT 459

IV MONOTHEISM 489

CHAP. PAGE
V ETHICAL IDEALISM 527
VI PHILOSOPHIC ETHICS 544
VII MODERN ETHICS 568
VIII THE LINE OF ETHICAL DEVELOPMENT . . . 613
INDEX 639

LIST OF ABBREVIATIONS

Alabaster = Alabaster, E.: Notes and Commentaries on Chinese Criminal Law, 1889.
Amélineau = Amélineau: La Morale Egyptienne, etc., 1892.
Annales = Annales du Musée du Congo belge.
Âpastamba = The Sacred Laws of the Aryas, as taught in the schools of Âpastamba, etc. Translated by Georg Bühler. Books of the East. vol. ii.
Azara = Azara, F. D.: Voyage dans l'Amérique Méridionale.

B.A. = Reports of the British Association.
Bancroft = Bancroft, H. H.: Native Races of the Pacific States.
Batchelor = Batchelor, J.: The Ainu of Japan.
Baudhâyana = The Sacred Laws of the Âryas. Translated by Georg Bühler. Part II. Vâsishtha and Baudhâyana: Sacred Books of the East, vol. xiv.
Baumann = Baumann, O.: Durch Massailand zur Nilquelle.
Beveridge = Beveridge, P.: The Aborigines of Victoria and Riverina.
Blackstone = Blackstone: Commentaries on the Laws of England, 1765–9.
Boaz = Boaz, Dr. F.: On the Indians of British Columbia. Reports of the British Association, 1888, 1889, 1890, 1891.
Bodenstedt = Bodenstedt, F. M.: Die Völker des Kaukasus.
Breasted = Breasted, J. H.: Ancient Records of Egypt.
Brough Smyth = Brough Smyth: The Aborigines of Victoria.
Bruns = Bruns, C. G.: Fontes Juris Romani Antiqui (4th ed.).
Bryce = Bryce, Lord: Studies in History and Jurisprudence, 1901.
Budge = Budge, E. A. W.: Book of the Dead, 1901.
Burgdt = Burgdt, J. R. M. van der: Dictionaire française-Kirundi.
Busolt = Busolt, G.: Die Griechischen Staats-u. Rechtsaltertümer, in I. E. P. von Müller's Handbuch der Klassischen Altertumswissenschaft, Bd. IV, 1891.

Calvin = Calvin, J.: Institutes of the Christian Religion. Translated by J. Allen, 1838.
Cambridge Expedition = Cambridge Expedition to the Torres Straits, 1904.
Catlin = Catlin, G.: Letters and Notes on the Manners, Customs and Conditions of the North American Indians, 1841.
Chamberlain = Chamberlain, A. E.: Report on the Kootenay Indians of S.-E. British Columbia. Reports of the British Association, 1892.
Codrington = Codrington, R. H.: The Melanesians.
Corpus Juris = Ed. Richter, 1879–81. Note. References to the Council of Trent are taken from the earlier edition, 1839.
Coudreau = Coudreau, H.: Chez nos Indiens.
Crooke = Crooke, W.: The North-Western Provinces.
Curr = Curr, E. M.: The Australian Race.

Dalton = Dalton, E.: Descriptive Ethnology of Bengal, 1872.
Dareste = Dareste, R.: Études d'histoire du droit, 1889.

Dawson = Dawson, J.: Australian Aborigines.
De Groot = De Groot, J. H. H.: The Religious Systems of China, etc., 1892.
Dhammapada = Translated from the Pâli by F. Max Müller. Sacred Books of the East, vol. x.
Dorsey = Dorsey, J. A.: Omaha Sociology. Reports of the Bureau of Ethnology of the Smithsonian Institution, 1881–2.
—— A Study of Siouan Cults. R. B. E., xi.
Douglas = Douglas, Sir R. K.: Society in China, 1894.
Driver = Driver, S. R.: A Critical and Exegetical Commentary on Deuteronomy, 1895.
—— An Introduction to the Literature of the Old Testament, 1897.
Duncker = Duncker, M.: The History of Antiquity. Translated by M. E. Abbott, 1877–83.

Ehrenreich = Ehrenreich, P.: Beiträge zur Völkerkunde Brasiliens. König. Museum für Völkerkunde, Bd. II.
Ellis = Ellis, A. B.: The Tshi-speaking Peoples of the Gold Coast of West Africa, 1887.
—— The Yoruba-speaking Peoples of the Slave Coast of West Africa, 1894.
Erman = Erman, A.: Life in Ancient Egypt. Translated by H. M. Tirard, 1894.
Eschwege = Eschwege, C. W. von: Brasilien.
Esmein = Esmein, A.: Histoire de la procédure criminelle en France, etc., 1882.
Eyre = Eyre, E. J.: Journals of Expeditions.

Farnell = Farnell, L. R.: The Cults of the Greek States, 1896.
Fletcher and La Flèche = Fletcher, Miss, and La Flèche: The Omaha. Reports of the Bureau of Ethnology of the Smithsonian Institution, xxvii.
Fraser = Fraser, J.: The Aborigines of New South Wales.
Frazer = Frazer, J. G.: The Golden Bough, a study in Comparative Religion (2nd and 3rd editions).
Friedländer = Friedländer, L.: Darstellungen aus der Sittengeschichte Roms, etc., 1888–90.

Girard = Girard, P. F.: Manuel Elémentaire de Droit Romain, 1896.
Goddard = Goddard, P. E.: Life and Culture of the Hupa. University of California Publications, vol. i.
Grinnell = Grinnell, G. B.: Blackfoot Lodge Tales.
—— Pawnee Lodge Tales.
Grotius = Grotius, Hugo de: De Jure Belli et Pacis.

Haddon = Haddon, A. C.: Reports of the Cambridge Anthropological Expedition to Torres Straits.
Hagen = Hagen, B.: Die Orang Kubu auf Sumatra.
Hall = Hall, W. E.: A Treatise on International Law, 1904.
Hammurabi. *See* Johns.
Harnack = Harnack, A.: Outlines of the History of Dogma. Translated from the third German edition by J. Millar, 1894–9.
——Lehrbuch der Dogmengeschichte, 1894.
Harrison = Harrison, J. E.: Prolegomena to the study of Greek Religion, 1903.
Hill-Tout = Hill-Tout, Ch.: British North America.
Hollis = Hollis, A.: The Masai. *Idem.* The Nandi.
Hose and McDougall = Hose, Ch., and McDougall, W.: The Pagan Tribes of Borneo.

Howard = Howard, G. E.: History of Matrimonial Institutions, 1904.
Howitt = Howitt, A. W.: The Native Tribes of S.-E. Australia, 1904.
Hunter = Hunter, W. W.: The Indian Empire. Trübner's Oriental Series, 1878, etc.
Huth = Huth, A. H.: The Marriage of Near Kin, etc., 1887.

I. A. E. = Internationales Archiv fur Ethnographie.
Ihering = Ihering, R. von: Evolution of the Aryan. Translated from the German by A. Drucker, 1897.
—— Geist des römischen Rechts, auf den verschiedenem Stufen seiner Entwickelung, 1891.
im Thurn = im Thurn, E. F.: Among the Indians of Guiana.
Ingram = Ingram, J. K.: A History of Slavery and Serfdom, 1895.

J. A. I. = Journal of the Anthropological Institute.
Jastrow = Jastrow, Morris: The Religion of Babylonia and Assyria, 1895.
Jenks = Jenks, E.: Law and Politics in the Middle Ages, 1898.
Jevons = Jevons, F. B.: An Introduction to the History of Religion, 1902.
Johns = Johns, C. H. W.: The Oldest Code of Laws in the World (Hammurabi).
Johnston = Johnston, Sir H. H.: George Grenfel and the Congo.
—— Uganda Protectorate.
J. R. A. S. = Journal of the Royal Asiatic Society.

K. and K. = Fison and Howitt, A. W.: Kamilaroi and Kurnai.
Kohler u. Peiser = Kohler und Peiser: Aus dem Babylonischen Rechtsleben.
—— Hammurabi's Gesetz, 1904.
Koran = Koran, Parts I and II. Translated by E. H. Palmer. Sacred Books of the East, vols. vi and ix.
Kuenen = Kuenen, A.: The Religion of Israel to the fall of the Jewish State. Translated from the Dutch by A. H. May, 1873.

La Cour and Appel = La Cour, P., and Appel, J.: Die Physik auf Grund ihrer geschichtlichen Entwickelung, etc. Übersetzung von G. Siebert.
Laffitte = Laffitte, P.: A General View of Chinese Civilization, etc. Translated by J. C. Hall, 1887.
Lang, G. S. = Lang, G. S.: The Aborigines of Australia.
Lang, J. D. = Lang, J. D.: Queensland, Australia.
Lecky = Lecky, W. E. H.: History of European Morals from Augustus to Charlemagne, 1877.
Legge = Legge, J.: The Chinese Classics, 1861–72. Vol. i, Confucian Analects, etc.; vol. ii, Works of Mencius; vol. iii, The Shoo-King (two parts); vol. iv, The She-King (two parts).
Leist = Leist, B. W.: Græco-italische Rechtsgeschichte, 1884.
Letourneau = Letourneau, C.: La Condition de la Femme dans les diverses races et civilisations, 1903. (La Femme.)
—— La Guerre dans les diverses races humaines, 1895. (La Guerre.)
—— L'évolution de l'Esclavage dans les diverses races humaines, 1885. (L'Esclavage.)
Ling Roth = Ling Roth, H.: Natives of Sarawak.
Loskiel = Loskiel, G. H.: Geschichte der Mission unter den Indianern.
Luther = Luther, Martin: Luther's Primary Works, edited by Wace and Buchheim, 1896.

Magyar = Magyar, L.: Reisen in Südafrika.
Manu = Manu, Laws of. Translated by Georg Bühler. Sacred Books of the East, vol. xxv.

Martin = Martin, R.: Die Inlandstämme der Malayischen Halbinsel.
Martius = Von Martius: Beiträge zur Ethnographie Amerikas.
Maspero = Maspero, G.: The Dawn of Civilization: Egypt and Chaldea. Edited by A. H. Sayce. Translated by M. L. McClure, 1901.
—— Recueil de Travaux, relatifs à la philologie et à l'archéologie Egyptienne et Assyrienne. Publié sous la direction de G. Maspero, 1870. (Recueil.)
Meissner = Meissner, B.: Beiträge zum Altbabylonischen Privatrecht, 1893.
—— De Servitute Babylonico—Assyriaca, 1882.
Metz = Metz, J. F.: The tribes inhabiting the Nilgherry Hills.
Mommsen = Mommsen: Zum ältesten Strafrecht der Kulturvölker, 1905.
Montefiore = Montefiore, C. G.: Lectures on the Origin and Growth of Religion, as illustrated by the Religion of the Ancient Hebrews. Hibbert Lectures, 1892.
Mooney = Mooney, J.: The Kiowa. Reports of the Bureau of Ethnology of the Smithsonian Institution, xvii.
Morgan = Morgan, L. H.: Houses and Houselife of the American Aborigines, 1877.
—— The League of the Ho-de-no-sau-nee, or Iroquois, 1851. (Iroquois.)
Müller = Müller, F. W. K.: Batak-Sammlung. Veröf. aus dem K. Museum fur Völkerkunde, Bd. III.
Müller = Müller, W. Max: Die Liebespoesie der Alten Aegypter, 1897.
Muir = Muir, J.: Original Sanscrit Texts on the Origin and History of the People of India, 1868–84. 5 vols.
Munzinger = Munzinger, W.: Ostafrikanische Studien.
Murdoch = Murdoch, J.: Point Barrow Expedition. Reports of the Bureau of Ethnology of the Smithsonian Institution, 1887.

Nieboer, Dr. = Nieboer, H. J.: Slavery as an Industrial System.

Old = Old, W. G.: The Book of the Simple Way of Laotze, 1904.
Oppenheimer = Oppenheimer, H.: The Rationale of Punishment.
Oppert = Oppert, J.: La Condition des Esclaves à Babylone, etc. Extraits des comptes rendus de l'Académie des Inscriptions, 1888.
Orbigny = Orbigny, Dessalines, A. D'.: Voyage dans l'Amérique Méridionale.
Overbergh = Overbergh, Cyr. von: Collection de monographies ethnographiques.

Parker, Mrs. = Parker, Mrs. K. L.: The Euahlayi Tribe.
Paulitschke = Paulitschke, Ph.: Ethnographie Nord-Ost-Afrikas.
Petermann, Dr. = Dr. Petermann's Mittheilungen aus Justus Perthes' Geographischem Anstalt.
Petrie, Flinders = Petrie, W. M. Flinders: Religion and Conscience in Ancient Egypt, 1898.
Pike = Pike, L. O.: History of Crime in England, 1873–6.
Pollock and Maitland = Pollock, Sir Frederick, and Maitland, F. W.: The History of English Law before the time of Edward I, 1898.
Post = Post, A. H.: Afrikanische Jurisprudenz, 1887. (A. J.)
—— Grundriss = Grundriss der Ethnologischen Jurisprudenz, 1894.
Powell = Powell, J. W.: Wyandot Government. Reports of the Bureau of Ethnology of the Smithsonian Institution, I.
Powers = Powers, S.: Tribes of California. Contributions to N. A. Ethnology, vol. iii, 1877.

Rätzel = Rätzel: History of Mankind. Translated from the second German edition by A. J. Butler, 1891.
R. B. E. = Reports of the Bureau of Ethnology of the Smithsonian Institution.

Reclus = Reclus, E.: Primitive Folk. Studies in Comparative Ethnology, 1889.
Reed = Reed, W. A.: The Negritos of Zambales. Department of the Interior. Ethnological Publications, vol. ii, part i.
Risley = Risley: Tribes of Bengal.
Rocheforte, de = Rocheforte, de: History of the Antilles, 1665.
Ross = Ross, B. R.: Notes on the Tinnehs and Chepewayans. Reports of the Board of Regents of the Smithsonian Institution, 1866.
Roth = Roth, W. E.: Ethnological Studies among the N.-W.-C. Queensland Aborigines.

Saussaye, de la = Saussaye, P. C. de la: Manual of the Science of Religion. Translated from the German by B. S. Colyer-Ferguson.
Sayce = Sayce, A. H.: Records of the Past, etc., 1873. New Series, 1890.
Schoolcraft = Historical and Statistical Information respecting the Indian Tribes, etc., 1851–60.
Schoolcraft-Drake = Drake, F. S.: The Indian Tribes of the United States. Based on Schoolcraft's "Archives of Aboriginal Knowledge."
Schröder = Schröder, R.: Lehrbuch der deutschen Rechtsgeschichte.
"Simpler Peoples" = The Material Culture and Social Institutions of the Simpler Peoples. By L. T. Hobhouse, G. C. Wheeler, and M. Ginsberg.
Skeat and Blagden = Skeat, W. W., and Blagden, C. O.: Pagan Races of the Malay Peninsula.
Spencer and Gillen (I) = Native Tribes of Central Australia, 1899.
—— (II) = Northern Tribes of Central Australia, 1904.
Starcke = Starcke, C. N.: The Primitive Family, 1889.
Steinen, von = Steinen, Carl, von den: Unter den Naturvölkern Zentral-Brasiliens.
Steinmetz = Steinmetz, S. R.: Rechtsverhältnisse von eingeborenen Völkern in Afrika und Ozeanien.
Stenin, von = Stenin, P. von: Die Kurden des Gouvernments Eriwan. Globus, LXX, 1896.
Stephen = Stephen, Sir J. F.,: A History of the Criminal Law of England, 1883.
Swanton = Swanton, J. R.: The Thlinkeet. Reports of the Bureau of Ethnology of the Smithsonian Institution, xxvi.

Teit = Teit, J.: The Lillooet Indians. Edited by F. Boaz. Publications of the Jesup North Pacific Expedition, vol. ii, part 5, 1900.
—— The Thompson Indians of British Columbia. Edited by F. Boaz. Publications of the Jesup Expedition, vol. i.
Thomson = Thomson, J.: To the Central African Lakes and Back.
Thouar = Thouar, A.: Explorations dans l'Amérique du Sud.
Thurston = Thurston, E.: Castes and Tribes of Southern India.
Tschudi von = Tschudi, J. J. von: Reisen durch Südamerika.
Tylor = Tylor, E. B.: Primitive Culture, 1903.

Viollet = Viollet, P.: Histoire du droit civil français, 1893.

Waitz, G. = Waitz, G.: Deutsche Verfassungsgeschichte, 1880.
Waitz, T. = Waitz, T.: Anthropologie der Naturvölker, 1859–72.
Westermarck = Westermarck, E.: History of Human Marriage, 1901.
—— Origin and Growth of the Moral Ideas, 1906.
Wilamowitz = Wilamowitz-Möllendorf, U. von: Staat und Gesellschaft der Griechen und Römer.
Wines = Wines, F. H.: Punishment and Reformation, etc., 1895.
Wissowa = Wissowa: Religion und Kultus der Römer, 1902. In I. E. P. von Müller's Handbuch der Klassischen Altertumswissenschaft, Bd. 5.
Woods = Woods, J. B.: Native Tribes of S. Australia.

Z. f. V. R. = Zeitschrift für Vergleichende Rechtswissenschaft.

Zend Avesta = Zend Avesta, Part I, The Vaudîdâd, translated by James Darmesteter. Part II, The Sirôzahs, etc., translated by James Darmesteter. Part III, The Yasna, etc., translated by L. H. Mills. Sacred Books of the East, vols. iv, xxiii, xxxi.

Z. E. = Zeitschrift für Ethnologie.

Zimmern, A. E. = The Greek Commonwealth.

Zimmern, H. = Beiträge zur Kenntniss der babylonischen Religion: Die Beschwörungstafeln Surpu. Ritualtafeln für den Wahrsager, Beschwörer und Sänger: Delitzsch u. Haupt Bibliothek, 1896.

Zu Wied = Wied, Prinz M. zu: Reise in Brasilien.

MORALS IN EVOLUTION

PART I

THE STANDARD

CHAPTER I

GENERAL CHARACTERISTICS OF ETHICAL EVOLUTION

1. THE object of the present work is to trace the evolution of the ethical consciousness as displayed in the habits and customs, rules and principles, which have arisen in the course of human history for the regulation of human conduct. In no part of the world, and at no period of time, do we find the behaviour of men left to unchartered freedom. Everywhere human life is in a measure organized and directed by customs, laws, beliefs, ideals, which shape its end and guide its activities. As this guidance of life by rule is universal in human society, so upon the whole it is peculiar to humanity. There is no reason to think that any animal except man can enunciate or apply general rules of conduct. Nevertheless there is not wanting something that we can call an organization of life in the animal world. How much of intelligence underlies the social life of the higher animals is indeed extremely hard to determine. In the aid which they often render to one another, in their combined hunting, in their play, in the use of warning cries, and the employment of "sentinels," which is so frequent among birds and mammals, it would appear at first sight, that a considerable measure of mutual understanding is implied, that we find at least an analogue to human custom, to the assignment of functions, the division of labour, which mutual reliance renders possible. How far the analogy may be pressed, and whether terms like "custom" and "mutual understanding," drawn from human experience, are rightly applicable to animal societies, are questions on which we shall touch presently. Let us observe first, that as we descend the animal scale the sphere of intelligent activity is gradually narrowed down,

and yet behaviour is still regulated. The lowest organisms have their definite methods of action under given conditions. The Amœba shrinks into itself at a touch, withdraws the pseudopodium that is roughly handled, or makes its way round the small object which will serve it as food. Given the conditions, it acts in the way best suited to avoid danger, or to secure nourishment We are a long way from the intelligent regulation of conduct by a general principle, but we still find action adapted to the requirements of organic life.

2. Thus in the lowest grades of the organic world behaviour is already regulated, and regulated to some purpose. It will repay us to consider very briefly the method of this regulation, and to observe how it changes as we ascend the organic scale. In the lowest grades of life, then, whether plant or animal, we find behaviour pretty rigidly determined by the structure of the organism itself. The sensitive plant or the protozoon does not act at random, but it is so constructed that when stimulated in a particular way by some outer object it responds to this stimulus by some definite motion. In this way, for example, the tentacles of the Venus' Flytrap close over the luckless insect which has settled upon its leaf, a touch on any one of the spines of the leaf causing the two halves of the leaf-end to fold inward as on a hinge. The insect is thus enclosed, and certain glands upon the leaf secrete the digestive juice to aid in its assimilation.[1] In the same apparently mechanical manner the tentacles of a sea-anemone close over a small object which lodges among them. Actions of this kind, which may generally be called reflexes, for the most part serve a function which we can readily discover and assign in the life of the organism; for example, in the instances mentioned they secure its food. But though they serve this purpose it is almost certain that we should be mistaken in regarding them as purposeful or intelligent in character. Reflexes of this type proceed with equal certainty and regularity, whether in the particular case they happen to be good or bad for the organism. We can most easily understand their character by considering any one of the numerous reflex actions which we ourselves perform. If a small foreign object—a speck of dust or a crumb of food—gets into our windpipe, we cough; that is to say, a series of muscular contractions is set up whereby the foreign

---

[1] Lloyd Morgan, *Animal Intelligence*, p. 26. Observe that innutritious objects, such as particles of sand, do not cause a regular contraction of the tentacles, though their impact is followed by a secretion. In other words, the re-action only follows in its completeness in cases where it serves a purpose.

body is expelled. This serves a purpose which is very useful to us, but it is not done by the aid of our intelligence. It is done by our nerves and muscles upon their own account without the aid of our will, and even, as we know, sometimes against our will. Similarly, if an object comes straight at our eyes, we blink, and we do so even though we know we are not going to be hit. The blink normally serves the purpose of protecting the eyes, but the number of people who can refrain from blinking when it is known to be useless is comparatively small. We blink on any given occasion, not because as intelligent persons we wish to protect our eyes, but because a certain structure of nerves and muscles exists in us, which, being touched as it were by the stimulus of something coming straight at the eyes, is brought into operation automatically. This structure is ordinarily useful to us. Similarly, it was useful to our ancestors, and the biological theory is that it has grown up and been perpetuated in us because from generation to generation it has on the balance been found useful. Those in whom it failed would be likely to lose their sight, and with their sight they might well lose their lives, and losing their lives they would fail to leave descendants, and so their stock would become blotted out. Conversely, the same conditions would favour the perpetuation and increase of a stock in which the structure was well developed. This explanation may be applied to all the simplest methods of adjusting responses to stimulus. In every generation those individuals who best responded to the circumstances in which they were placed from time to time would tend to survive in the largest numbers. The physical structure best suited to give these responses would thus be perpetuated, and while the variations for the worse would be eliminated the variations for the better would be preserved. In this way, according to the biological theory, physical structures arise which fixedly determine the most suitable kind of response to the kind of stimuli which most frequently affect organisms of any given species. Thus, without the exercise of any intelligence on the part of any individual organism, without the formation of the idea of a purpose at any single point in the whole history, certain fundamental purposes are, nevertheless, served, and the conditions which secure that they should be served are perpetuated. Here, then, we have a form of the regulation of behaviour proceeding without the intervention of any intelligent agency.[1]

---

[1] *i. e.* in the evolving organisms themselves. Whether the whole "plan" of evolution implies a "planning" Mind is a deeper question which I do not raise here. I touch on it below; Part II. chap. viii.

3. As judged from the point of view of its efficiency in preserving the race, this method of regulating conduct has many defects. It is excessively rigid and excessively narrow. If a given contraction must follow a given touch, the results may upon the whole be good, but they may also in many instances be bad. Poisonous substances may be swallowed instead of nutritious food; dangerous enemies may be approached as though they were prey. Observation of young animals reveals many instances of this want of adaptation, and many of the actions, which at first sight so wonderfully dovetail into one another as to suggest a marvellous foresight of what the animal will require, turn out on further investigation to be blind responses to a physical stimulus which very often lead to fatal results. One instance may suffice here:—The larva of the Sitaris beetle provides for its future career by attaching itself to a bee which finds it in all necessaries. But it is not any knowledge of the bee and what the bee will do for it which impels the larva, for it will similarly attach itself to any hairy object which may come near—for example, to any other hairy insect; and probably a large number perish in this manner.[1] The larva is so constructed, in fact, that contact with, or proximity to, a hairy insect sets up the motions requisite for attaching the larva to that insect. In a sufficiently large proportion of cases the insect thus clung to is a bee, and by this means this particular structure enables the Sitaris beetle to perpetuate itself. But it can easily be seen that action will be far more efficiently regulated if the inherited structure can make some allowance for the difference of circumstances, if some plasticity, some capacity for modification should arise, and this, in point of fact, we find when we pass from the mechanical reflexes which we have hitherto considered to the instincts of higher animals.

Instinct is a relatively permanent condition of an animal, which will set it upon a train of actions, and in carrying out these actions, considerable variations may be possible according to the particular circumstances in which the animal finds itself placed. Thus in the springtime it is the instinct of birds to pair, to build nests, to tend their eggs and feed their young. There is no doubt at all on a survey of the whole evidence that the impulse to build nests and, broadly speaking, the method of building them are hereditary. But though hereditary, they are also modifiable. The method of nest-building is varied, the materials used are varied. The old bird builds his nest better than the young one, showing that even here practice makes perfect. The oriole, which usually conceals its nests from snakes and hawks, builds quite openly in villages where these enemies are not to be feared.[1] The orchard oriole builds a shallow nest on stiff branches, but on the slender twigs of the weeping willow builds deep, so that the young are not thrown out by the swaying of the nest. Even in the feeding of the young, cases are recorded in which apparently intelligent adaptation of the ordinary practice through some special circumstances proves to be well within the power of the bird.

---

[1] *Cambridge Natural History*, vi. 272.

As opposed to reflex actions, and as opposed to the popular idea of instinct, the facts show that, particularly as we ascend the animal scale, instincts are not perfect at birth, but are improved by practice. They are not rigid, but are capable of adaptation to varying circumstances; they are not, as it were, planned out by the inherited nature of the individual in all their detail. Yet nevertheless they rest upon a hereditary basis which has grown up under those same conditions which we have already seen laying down and fixing the structure which determines reflex action. It is important here to observe closely what these conditions are. We must bear in mind that it is not the survival of the individual which, upon the principles laid down by the biologists, will determine the growth of that structure upon which reflex action and instinct alike depend. If we personify Natural Selection, we may say that what it has in view is not the individual but the stock, or if we avoid personification and thereby lengthen our statement, we must say that the conditions which determine the growth and perpetuation of a given structure are not that that structure should preserve the life of each individual in which it exists, but that it should tend to preserve the breed of that individual. In the main these two objects fall into one, since it is only by having its own life preserved for a certain time that an individual can bring young ones into existence; but where they diverge, the young should, according to the logic of the argument, get the preference from natural selection, and so, in point of fact, the act of procreation is in some instances fatal, and throughout the animal world the actions necessary for reproduction are as important and as closely determined by the structure of the individual as the actions necessary for the maintenance of its own life. But on this point a very important difference emerges as we ascend the animal scale. In the lower layers of organic creation, the maintenance of the stock is principally secured by the vast numbers, running up even to millions, of individuals which may spring from a single individual in the course of one season. In the higher ranks of animal life the birth-rate rapidly diminishes. Each individual produces a few, or, in the end, a single young one annually, or perhaps even less frequently, and makes up for its infertility by the care which it devotes to the rearing of its more limited family. There is every reason to regard this parental affection, which begins in such elementary methods as the attachment of eggs to a suitable object and proceeds from the very rough nest-building found among a few species of fish and among the lower birds to the high degree of parental affection shown by the most intelligent birds and mammals, as instinctive in character and based upon hereditary impulses. The cat tends its young by instinct just as truly as it hunts mice by instinct, and, broadly speaking, the conditions under which each instinct has arisen are the same. Each fulfils the requirements of race maintenance and enables the animal to leave behind it progeny like itself.

---

[1] A. R. Wallace, *Natural Selection*, p. 114, etc.

Precisely the same account may be given of the gregarious tendencies which become more developed and more useful to the species as we ascend the animal scale. Not only the social insects whose case presents peculiar difficulties, but many of the higher birds and mammals live in societies which are much larger than the natural family, and these societies are in a rudimentary way organized, that is to say, the members help one another. They play together, sometimes they hunt together; in a large number of interesting cases they employ sentinels who warn them of danger by an alarm note. "Ibex, marmots and mountain sheep whistle, prairie dogs bark, elephants trumpet, wild geese and swans have a kind of bugle-call, rabbits stamp on the ground, sheep do the same, and wild ducks, as the writer has noticed, utter a very low caution quack to signify the enemy in sight."[1] Here again there is no reason to doubt that the basis of behaviour is instinctive, but the instinct is modified as life proceeds. Strange as it may seem, young animals have no special instinct which bids them follow their own mothers. They will follow any large animal moving as their mothers do. They do not even know by instinct how to suck. A young lamb, for instance, will take whatever comes nearest into its mouth, say, a tuft of wool on its dam's neck, and it is only by degrees, guided perhaps by smell, that it acquires the right method of feeding itself.[2]

4. Thus, though the basis of the family and social life of the higher animals is laid in certain tendencies or characteristics

---

[1] Cornish, *Animals at Work and Play*, p. 48.
[2] Lloyd Morgan, *Habit and Instinct*, pp. 114, 116.

inherited from their forbears, these tendencies do not set down rigid lines of behaviour which are perfect from the outset, but rather supply a kind of basis upon which the experience of the individual itself may operate. This brings us accordingly to a new factor in the regulation of behaviour. When a young chick has emerged from the egg it will peck readily, and on the whole with surprising accuracy, at any small object lying on the ground that catches its eye. Some of the things that it pecks at it will swallow—yolk of egg, for example, gratifies its cannibal tastes, and having once swallowed a bit of yolk it will peck at another with increased avidity. This pecking we may regard as a reflex and ascribe to an inherited mechanism which is set going by the stimulus administered to the eye by the sight of the object. But if instead of yolk of egg the chick happens to peck at a piece of orange-peel, or at a certain caterpillar which has apparently an unpleasant taste, it will check itself in mid-career, or, if too late to do so, will swallow the object with gestures which we take as signs of disgust, and we have some ground for this interpretation because after a very few experiences—sometimes indeed a single instance—the chick learns to avoid objects of that kind; it continues to peck at the yolk, but rejects the caterpillar. Here, then, a new factor has intervened. The chick started with its hereditary mechanism wound up, as it were, for the purpose of pecking at any small object that it came across, but its own experience has an effect upon this mechanism. It stops its working in relation to certain objects while it permits or even encourages and perfects it in relation to others. On the strength of our human experience we attribute to the chick pleasurable and painful feelings. We assume that the taste of the one object was pleasant and that of the other disgusting. Whether we have a right to draw this inference is a question which need not be argued here. Our main point for the present is that experience modifies an inherited mode of reaction, and it will be convenient to call this experience pleasurable or painful according as it tends to encourage and perfect the reaction, or to discourage and finally put a stop to it. Clearly, the power of thus learning by experience will be of immense advantage to a species in the way of making its behaviour more plastic and adapting it more closely to the requirements of its life. But the utility of this new mode of regulating conduct will depend upon one condition—the feelings of the animal must in the main correspond with the actual requirements of its life. If all the distasteful food were nutritious and all the pleasant food poison, the only result of the operation of experience would be to bring the chick to a premature grave. But the feeling which the chick experiences is as much determined by the inherited structure of its brain and nerve organism as was the original tendency to peck. This inherited structure has grown up under precisely similar conditions, that is to say, it must upon the balance have assisted the ancestors of the chick in maintaining their stock and not tended to their destruction. What has happened, therefore, is that, in addition to a mere tendency to peck, the chick also inherits the structure which enables it to feel, and to feel in the main in a way that accords with the requirements of its life. The feelings of the individual, then, become the means by which within certain limits the behaviour of that individual is regulated, and thus far greater plasticity is gained for the behaviour itself. The animal which can thus learn by experience can afford to make its mistakes, and the more so as it has the fostering care of a mother to protect it from those mistakes which would be fatal.

Thus the range of adaptation has increased. In place of the direct response coming mechanically, whether well or ill suited to circumstances, in reply to some direct physical stimulus and persisting without variation through the life of the organism, there is room for a variation of behaviour according to the nature of the object with which the animal is brought into contact, as revealed by the experience of previous dealings with similar objects. The result is that a larger class of objects can be dealt with, and behaviour can be adequately adapted to the needs of the organism over a wider field. It is easy to see how this greater adaptability, arising from the power of the animal to utilize its own experiences, will work in with that plasticity of adaptation which we saw in the higher instincts. Instinct is always pressing the animal along the course which will satisfy it. If it can learn by experience what things satisfy and what things do not, it will be so much the better able to choose that course.

Now the kind of experience thus far described does not carry the animal beyond the direct and immediate results of a given reaction. One kind of act gives pleasure and another pain, and these pleasures and pains must, it would seem, be feelings of the agent itself; and though the act is suited to the feeling so as to secure the pleasure or avoid the pain, we cannot yet say that the animal acts with the intelligent purpose of securing the pleasurable or avoiding the painful experience. The full reasons for this caution need not be given here. It is sufficient to say that this method of learning by experience retains many of the features of a mechanical process, and where an animal can learn so much and no more, we are to regard its behaviour rather as determined by the results of its past experience operating upon its brain structure than by an intelligent apprehension of the future experiences which its action will secure for it. We shall best regard acts of this kind as still within the region of impulse, and as only one step upon the way to behaviour regulated by an idea of what is to happen in the future, and by desire or aversion for that happening. But we should remark that, still within the animal world, the capacity for learning by experience reaches a higher level. The dog, for example, which is scolded or beaten, let us say, for lying with its dirty paws upon a sofa, learns to avoid that sofa in the presence of its master for the future. But, in so doing, the dog will show a somewhat higher grade of intelligence than we find in the chick for, as we know only too well, it will, if possessed of an ordinary measure of canine obstinacy, avail itself of the sofa if nobody is looking on, and make a hurried descent if it hears somebody coming. There is in this an element of intelligence which, when all the evidence is put together, appears to carry us beyond that simple modification of an inherited method of action which we find in the case of the chick. The dog does not simply avoid the sofa, he does not merely and stupidly associate a sofa with the beating, he continues to like the sofa and to get what he can out of it; he knows that it is some particular person who will punish him, and he may even disregard the presence of those members of the household whom experience has shown him to be less strict. In a word, his action has all the appearance of being intelligently adapted to obtaining one result and avoiding another. He seems to project himself into the future by however short a distance, and to know what will happen to him under certain conditions; and thus, as the result which he achieves appears to be the determining factor in his action, we may admit that action to be definitely purposive. He not merely learns to prefer what is pleasurable in itself, and avoid what is painful in itself, but to do things which experience shows would have pleasurable results in the future, and avoid things which have painful results. We may say that he desires the one and has aversion for the other, and though it would not be strictly accurate to say that he desires pleasure, it is true to say that he desires what is pleasant and has an aversion for what is painful, and in this sense pleasurable and painful feelings are still the guides, or indirectly the guides, of his action.

But the dog's behaviour is not determined by his own feelings alone. The same intelligence which enables him to make this modest forecast of the future, also endows him with the power to recognize the individuals about him. He knows his master and his mistress; he distinguishes friends and enemies, human or animal, and, as we know, he is ready to fly to the assistance of the one or to the destruction of the other. He has every appearance of entering into the moods, as far as he can appreciate them, of those around him, and if we are sometimes inclined to an uncritical over-estimate of the dog's understanding, still a fair consideration of the whole of the facts leaves no reason to doubt that substantially we are correct in attributing to him knowledge of other individuals, and interest in what they do or suffer.

It is by no accident that the evidence of attachment and affection to other individuals, and of attention to the mate and the young in its higher developments, belongs almost exclusively to animals of the grade at which this higher form of intelligence begins to appear. Though the love for the young and the attachment to comrades have instinct for their basis, yet, as we have already seen, that instinct is highly plastic in its methods of effecting its ends, and in that plasticity evidences of intelligence frequently appear. Thus we shall not go wrong in attributing to the higher animals in their simple social life, not only the elementary feelings, the loves and hates, sympathies and jealousies which underlie all forms of society, but also in a rudimentary stage the intelligence which enables those feelings to direct the operations of the animal so as best to gratify them.

5. Thus, when we come to human society we find the basis for a social organization of life already laid in the animal nature of man. Like others of the higher animals, man is a gregarious beast. His interests lie in his relations to his fellows, in his love for wife and children, in his companionship, possibly in his rivalry and striving with his fellow-men. His loves and hates, his joys and sorrows, his pride, his wrath, his gentleness, his boldness, his timidity—all these permanent qualities, which run through humanity and vary only in degree, belong to his inherited structure. Broadly speaking, they are of the nature of instincts, but instincts which have become highly plastic in their mode of operation, and which need the stimulus of experience to call them forth and give them definite shape.

The mechanical methods of reaction which are so prominent low down in the animal scale fill quite a minor place in human life. The ordinary operations of the body, indeed, go upon their way mechanically enough. In walking or in running, in saving ourselves from a fall, in coughing, sneezing or swallowing, we re-act as mechanically as do the lower animals; but in the distinctly human modes of behaviour, the place taken by the inherited structure is very different. Hunger and thirst no doubt are of the nature of instincts, but the methods of satisfying hunger and thirst are acquired by experience or by teaching. Love and the whole family life have an instinctive basis, that is to say, they rest upon tendencies inherited with the brain and nerve structure; but everything that has to do with the satisfaction of these impulses is determined by the experience of the individual, the laws and customs of the society in which he lives, the woman whom he meets, the accidents of their intercourse, and so forth. Instinct, already plastic and modifiable in the higher animals, becomes in man a basis of character which determines how he will take his experience, but without experience is a mere blank form upon which nothing is yet written.

For example, it is an ingrained tendency of average human nature to be moved by the opinion of our neighbours. This is a powerful motive in conduct, but the kind of conduct to which it will incite clearly depends on the kind of thing that our neighbours approve. In some parts of the world ambition for renown will prompt a man to lie in wait for a woman or child in order to add a fresh skull to his collection. In other parts he may be urged by similar motives to pursue a science or paint a picture. In all these cases the same hereditary or instinctive element is at work, that quality of character which makes a man respond sensitively to the feelings which others manifest towards him. But the kind of conduct which this sensitiveness may dictate depends wholly on the social environment in which the man finds himself. Similarly it is, as the ordinary phrase quite justly puts it, "in human nature" to stand up for one's rights. A man will strive, that is, to secure that which he has counted on as his due. But as to what he counts upon, as to the actual treatment which he expects under given circumstances, his views are determined by the "custom of the country," by what he sees others insisting on and obtaining, by what has been promised him, and so forth. Even such an emotion as sexual jealousy, which seems deeply rooted in the animal nature, is largely limited in its exercise and determined in the form it takes by custom. A hospitable savage, who will lend his wife to a guest, would kill her for acting in the same way on her own motion. In the one case he exercises his rights of proprietorship; in the other, she transgresses them It is the maintenance of a claim which jealousy concerns itself with, and the standard determining the claim is the custom of the country.

In human society, then, the conditions regulating conduct are from the first greatly modified. Instinct, becoming vague and more general, has evolved into "character," while the intelligence finds itself confronted with customs, to which it has to accommodate conduct. But how does custom arise? Let us first consider what custom is. It is not merely a habit of action; but it implies also a judgment upon action, and a judgment stated in general and impersonal terms. It would seem to imply a bystander or third party. If A hits B, B probably hits back. It is his "habit" so to do. But if C, looking on, pronounces that it was or was not a fair blow, he will probably appeal to the "custom" of the country—the traditional rules of fighting, for instance,—as the ground of his judgment. That is, he will lay down a rule which is general in the sense that it would apply to other individuals under similar conditions, and by it he will, as an impartial third person, appraise the conduct of the contending parties. The formation of such rules, resting as it does on the power of framing and applying general conceptions, is the prime differentia of human morality from animal behaviour.[1] The fact that they arise and are handed on from generation to generation makes social tradition at once the dominating factor in the regulation of human conduct. Without such rules we can scarcely conceive society to exist, since it is only through the general conformity to custom that men can understand each other, that each can know how the other will act under given circumstances, and without this amount of understanding the reciprocity, which is the vital principle of society, disappears.

6. How custom grows and how it is related to individual character may in a general way be understood by considering how the process goes on amongst ourselves. Consider for a

---

[1] It implies all the growth that is involved in the formation of general rules of conduct as opposed to memories or anticipation of particular events, and on the moral side the growth of will as opposed to desire, and the formation of objects of permanent interest—relatively stable sources of happiness—as opposed to objects of temporary pleasure. By desire we are to understand impulse informed by the anticipation of an event. By will, a reaction of character to ends in which a relatively stable and permanent satisfaction is found. Its authority over desire we call self-control, but it is rather control by the self as a whole of one or other of the impulses which conflict with its permanent tendency. It is only when this relatively stable and balanced adoption of permanent ends or abiding principles is psychologically possible that the inculcation of general rules could have any meaning.

moment the judgments that we pass on our neighbours or on public men, and see how they are formed and how they operate. Many, indeed it is to be feared by far the larger portion, are made parrot fashion by the application of the first rough-and-ready rule, the simplest and shortest formula that leaps to our lips. We approve and condemn—generally condemn—in the patter of the tram-car or the railway carriage, fitting on modes of judgment that are flying about from mouth to mouth and scarcely obtain a lodgment in the brain. In these cases we are at best accepting and passing on what we find ready made for us by society. But how did it come to be made, since society is, after all, ourselves and those, not so greatly differing from us, who went before? This points us to a deeper, more original source of the moral judgment, and this, in fact, we find in ourselves in that smaller number of cases in which the subject of discussion stirs some impulse within us, touches some spring of our own nature, moves some hidden sympathy or antipathy that dissipates the patter of the street and speaks out for itself. Whenever this happens we ourselves originate a moral judgment, and we do not need to be told that this judgment has its immediate source in some feature of our own character, our sense of justice, our love of our country, our hatred of meanness or cruelty, or whatever it may be. According as one or another of these elements is strong in us, so do we become, as it were, centres from which judgments of one kind or another radiate, from which they pass forth to fill the atmosphere of opinion, and take their place among the influences that mould the judgments of other men. For no sooner has the judgment escaped us—a winged word from our own lips—than it impinges on the judgment similiarly flying forth to do its work from our next-door neighbour, and if the subject is an exciting one the air is soon full of the winged forces clashing, deflecting or reinforcing one another as the case may be, and generally settling down towards some preponderating opinion which is society's judgment on the case. But in the course of the conflict many of the original judgments are modified. Discussion, further consideration, above all, the mere influence of our neighbour's opinion re-acts on each of us, with a stress that is proportioned to various mental and moral characteristics of our own, our clearness of vision, our firmness or, perhaps, obstinacy of character, our self-confidence, and so forth. Thus, the controversy will tend to leave its mark, small or great, on those who took part in it. It will tend to modify their modes of judgment, confirming one, perhaps, in his former ways, shaking the confidence of another, opening the eyes of a third. Similarly, it will tend to set a precedent for future judgments. It will affect what men say and think on the next question that turns up. It adds its weight, of one grain it may be, to some force that is turning the scale of opinion and preparing society for some new departure. In any case, we have here in miniature at work every day before our eyes the essential process by which moral judgments arise and grow. Here we have the individual with his spontaneous utterance springing from his own character, guided by what lights he has. Here again we have the clash of judgments so delivered, the war of ideas, the resultant opinion of society, the consequent re-modelling of their first judgment in individuals, the growth in society of a certain way of looking at things, in short, of a tradition. Individual impulse and social tradition are thus the two poles between which we move.

Deep as are the contrasts between modern society and primitive life, we have no reason to doubt that there, too, the same forces were at work. The process would be far slower, though infinitely less mobile, and custom once formed far more set and crystallized. But the prime factors are the same. There is always the character of each individual as it has grown up under the conditions of heredity, with its sympathies and antipathies, its impulses social and selfish, its susceptibilities and feelings in which the relations of human being to human being play so prominent a part, uttering itself in judgments which praise or condemn conduct, forming conceptions of good and bad, right and wrong, as things jump with its feelings or displease them. There is always the influence of the society in which each man is born, the interaction between mind and mind and the shaping of individual opinions into a social standard, the modelling of each new generation by the heavy hand of the past.

7. That the moral standard of man is based on the character of man, though it sounds like a truism, is a principle which has been but little understood in modern ethics. It has generally been assumed that the alternative lay between resolving the moral code into something essentially non-moral, *e.g.* self-interest, or admitting an authoritative mode of judgment, intuitive or rational, the deliverance of which could admit of no further analysis. Even the admission that morality has an instinctive basis might seem to remove it from criticism, in view of the common conception of instinct as universal, infallible, and essentially non-rational. A juster conception of instinct as something which throughout the animal world is found to vary greatly in

individuals, to be quite fallible, often imperfect and capable from an early stage of employing elementary reasoning in its service, enables us to see the genesis of morality in a different light. The instinctive element in human morality is by no means an unfailing power implanted by nature in all men to distinguish right from wrong. It is a name for human character as it grows up under the conditions of heredity, and it is from this character, with all the faults and foibles along with the virtues thereof, that the moral judgment issues. Human morality is as blind and imperfect as man himself.

With some writers the view has found favour that sympathy is the basis of morality and of society. There is an element of truth in this, but it is too simple a statement. First, it is not sympathy alone that draws men together. Men have need of each other, physical need, and also a moral need for which sympathy is too simple an expression. Men may be drawn together by hate, by the passions of pride, by the love of competition—by a thousand motives which are far from being purely sympathetic or wholly good. Even love and affection, though at their best they imply sympathy, are not as such the same thing—otherwise passionate love would not so often be selfish. Secondly, if we take the actual as opposed to the ideal codes of mankind pure sympathy is certainly not their sole basis. It is a factor in them. They enjoin mutual support, mutual forbearance, they express in some degree the desire of the impartial onlooker to side with the man who is wronged. Yet in average morality there is a very strong dose of the opposite quality. The workaday rules of conduct belong to the morals of strife, of actual warfare it may be, or it may be of peaceful but not less deadly competition. In the mere apportionment of praise and blame the blame is apt to be by far the more interesting part of the matter and the exercise of censorship has made the very name of moralist one to flee from. The rude mind thoroughly enjoyed the time when " the villain had his flogging at the gangway and we cheered." To the more cultivated a moral flagellation is no less acceptable. It is only the highest ethical thought which rises above the categories of praise and blame to the clear-eyed vision of humanity wherein to " judge " men means merely to learn how to deal with them so that they may serve and not mar the common good.

Let us, then, understand that human morality from the first rests on the antagonisms as well as the sympathies, the corruptions and foibles as well as the excellences of human nature. It does not follow that it is a form of selfishness based on the desire for reciprocal benefits. Such a genesis would be out of keeping not only with the content of morality itself, but with all that we know of the origin of instinct. Reciprocity undoubtedly has a weighty influence in the shaping of conduct. It tends to set the average standard. A upon the whole will be content to do for B what B has done for him, and moreover C will expect as much of A. If he does less he is mean, if more he is generous. In the absence of selfish motives, again, the standard is apt to run down. Men do not become dead to obligation, but they interpret it laxly, and in the absence of criticism give all the doubtful points in their own favour. Where there is no compulsion to give anything, the donor of a penny may swear that he has done more than was required of him. Hence (incidentally) the importance in many matters of public ethics of substituting legal obligation for the good-will of individuals. The best men do their duty already of their own motion. True—but make what they do the law. The result is to raise the whole standard. The worst are worked up to it, the best find still better things to do. All this may prove that selfish considerations sway mankind, but of the doctrine of self-interest as the primary and only genuine human motive, it is sufficient to say that it bears no relation to the facts of human nature, and implies an incorrect view of the origin of instinct.

8. Instinct we saw arose under the conditions of animal life, and is therefore bound in the main to subserve and not to hinder the needs of the living animal. There is an analogous condition limiting, and indirectly shaping, the moral judgment, for if the standard of conduct were so perversely formed as to favour actions tending to the dissolution of the social bond, it would in the end be self-destructive. The society which should habitually favour such conduct would perish by its inherent vices, and thus, as Plato urges, the saying that there must be honour even among thieves expresses a very important truth. But the limit thus imposed is a very elastic one, and this factor by no means works so uniformly for good as might be supposed. To begin with, society's shoulders are broad, and they can bear many a burden imposed by human perversity without breaking down. Many injurious customs may arise and flourish as long as they do not touch the social life in a vital spot. Secondly, the principle cuts both ways, as the example of the thieves itself suggests. If the thieves become too honourable they would give up thieving and their particular form of society would break down. This same consideration holds of all class morality. The members of

a privileged class must, if they are to remain a privileged class, carefully resist the encroachment of wider conceptions of the public good. They must combat such conceptions not only in principle but in their detailed application. They must extirpate any mode of thought which they find rising among their members in which a dangerous implication may be detected. Or, failing to extirpate it, they must employ some of those methods of interpretation which long experience has proved useful in drawing the sting out of higher ethical truth. The study of these methods, however, is not our immediate purpose. All we have to remark is that, while the requirements of the social union are an underlying condition limiting the movement of the ethical consciousness, these requirements themselves vary according to the nature of each society, and while there are some changes which would destroy society altogether—as *e. g.* if a doctrine of universal celibacy were to prevail—there are others which would merely destroy the existing form of society by transmuting it into something different, perhaps worse, perhaps better. Historically, both the fundamental requirements of the social order and the more occasional requirements of a given stage in social evolution have deeply influenced ethical growth. But the influence is for the most part unconscious. Men feel in that dim fashion which is popularly called instinctive that a given change is pregnant with consequences that would deeply affect the social order, and without thinking the matter out, they are prejudiced for or against the change, according as they are dissatisfied or contented with things as they are. The bearings of any new judgment on the general framework of social life must therefore be set down as a most important factor in determining its acceptance or rejection, though the working of this factor may be obscure and indirect, and may indeed be fully accomplished without the deliberate agency of any single individual who has thought the whole matter out.

But, in fact, as human intelligence expands, these underlying conditions of ethical movements are no longer left to work out their effects slowly and indirectly in the sphere of the unconscious. On the contrary, the requirements of social welfare are deliberately taken into account in dealing with new questions, and even established customs and traditions are criticized in the light of experience. Here emerge some of the broad differences between primitive and more advanced societies.

To Primitive Man custom, as such, is sacred. It is true that it often has some theory to back it. It may be that it was a rule received from the heroes of old, or brought down graven on stone from Sinai, that its violation would, as the Australians hold, produce a variety of bodily ailments, or, as the ancient Babylonians held, expose the offender to the malevolence of witch or demon. But, in reality, the customary is sacred because it is customary, and Sophocles is nearer the true feeling of the ordinary mind when he makes Antigone declare that the moral law is sacred, " because it is not of to-day or yesterday, but lives for ever, and none knows whence it sprang." To the primitive mind—and in all of us there is a good deal of the primitive—it is only the mysterious that is impressive, and custom would lose half its force if its origin and meaning could be rationally explained and logically justified. But thought does not remain permanently at this level. As we follow the ethical movement in its advance, we shall find more and more that the interest shifts from the tradition which men follow half mechanically to the deliberate attempt to re-organize conduct on the basis of some distinct theory of life. A religious movement, a new conception of God or the future life, a philosophical theory of man's place in nature, a fresh analysis of human society, shifts the basis and so affects the standard of conduct. At the same time, the converse truth must never be lost sight of. The existing structure of society, the character of physical environment, and the views current in his surroundings of the duties of man, insensibly affect the thought of the profoundest and most original prophet or thinker. Nowhere is the feat of escaping from one's own shadow harder than in the world of ethical and religious thought. Thus, in ethics, custom and theory are in constant and close interaction, and our subject, the comparative study of ethics, must embrace them both. It would include, were it within one man's power to treat it exhaustively, at the one extreme the quasi-instinctive judgment based on the unthinking acceptance of tradition, at the other the profoundest theory of the thinker seeking a rational basis of conduct and an intelligible formula to express the end of life, and between these two the influences, rational and half rational, which are at work with increased assiduity as civilization advances, re-modelling custom and substituting deliberately-accepted principle, whether true, half true, or false, for blind tradition. The one thing common to both extremes and all the intermediate region, is that there are things that men approve and disapprove—conduct, character, purposes, results—that they judge " good " or " bad." The subject of ethics may therefore be defined in the broadest terms as the inquiry into the Conception of the Good, and the business of comparative ethics is to determine the generic character and principal specific variations of this conception as actually held by men in different places at different times. Finally, it must inquire whether among these conceptions there is anything that can be called development.

9. Thus the conception of the Good is the central point of ethics, and whatever belongs essentially to this conception we call ethical. Variations in the conception of the good, for instance, we call ethical variations; development in it, if such there be, ethical development. The essential conditions, such as human character, on which the conception depends, are the "ethical" factors in life.

Now the conception of the Good is the logical foundation of every rule of action—that is, of the whole standard of conduct. But it is important to observe from the outset, as bearing on the limits of our inquiry, that the standard of conduct may be affected by causes which are not ethical in origin though they may come to have ethical consequences. On one and the same conception of the good, for example, the same conduct may be differently judged, merely because its results were once believed to be good, and are shown by a later experience to be other than was at first supposed. For example, a magical rite may be prescribed as a duty because it is believed to be efficacious in averting a calamity to one's self, one's family, one's society, as the case may be. If the belief in magic disappears, the performance of the rite will cease to be obligatory, although there may be no change in the current conception of the duties to society, family or self. From this simple example we can understand that rules of conduct are affected by the general level of intelligence and knowledge. The whole character of man's outlook on the world, the degree in which he understands the forces which surround him, will naturally affect his behaviour in many directions. It may be said that this has nothing to do with ethics, but turns on the obvious distinction between means and ends. The end, which is what men really conceive as "good," is the same, only advancing knowledge alters their view as to the means of securing it. But the relationship is in reality far more intricate and subtle than this. Not merely the working rules of behaviour, but the actual conception of what is good or bad is profoundly influenced by the ideas current of man's place in nature and of the forces which surround him, while conversely the conception of the good that he has formed influences man's ideas about the world and the agencies which control it. What the gods ordain comes to be thought right, and so to influence character; while, again, if men come to see that what the gods have ordained is wrong, their conception of the gods is altered and a religious revolution is brought about. Here even the silence of the ethical consciousness is instructive. If a barbarous practice, such as human sacrifice, is tolerated as a part of religion, the mere fact that the moral sense does not rise in revolt against it is painful evidence of the stunted growth of that side of human nature. But though ethical conceptions thus influence and are influenced by the general condition of knowledge and the conception that man forms of the world in which he lives, we cannot say that ethical, intellectual and religious development are the same thing. Many advances in knowledge may be made without affecting the conception of the good in the smallest degree. Many religious conceptions have no bearing for good or evil upon ethics. It is best to regard these factors of development not as identical but as closely correlated. In particular, ethical and religious evolution are closely intertwined, and we shall have to trace the second in so far as it is essential to the first.

Again, individual conduct may be determined not by a conception of the good but by the compulsion of law. Here there is at first sight another non-ethical influence, controlling behaviour, but here, again, when we look further, we see that the relation is more intimate. Not only are laws founded upon some one's conception of the good (though not always that of the subject who obeys the law), but law in turn affects the conception of the good itself, and as with law so with changes of the social structure generally. Now such social changes take place for the most part without any planning or designing on the part of the society which experiences them. Just as the individual grows with no effort on his own part, and with only a very limited power of regulating his physical development, so society grows, changes, and it may be decays, in ways and from causes of which it is for the most part quite unaware. It is only in the later stages of culture that men begin to study systematically the nature of social forces and the conditions of growth, arrest and decay. No doubt the efforts of the teacher or the statesman to resist glaring evils or develop beneficent tendencies have their effect, and the part played by deliberate reform increases as culture develops. Yet the forces which move society and are ever changing the mutual relations of its members are so vast and so intricate that they still in great measure elude the grasp of the wisest minds, and, as every one knows, the reforms most deliberately planned and most carefully thought out have a hundred unexpected reactions over and above the direct effect which they were designed to produce. Now these slow and silent changes of society are always modifying the ethical standard as expressed in the customs of society. Purely economic changes, for example, will tend to raise one class and depress another. A community in which comparative equality has reigned may give way to one divided between rich and poor, and from such a division some form of class morality is almost certain to arise. That is to say, the difference in social power will be represented by a differentiation in the social code between the behaviour due to a member of the more powerful class and that due to "inferiors." Such causes as the accumulation of capital and the rise of large urban markets have at times made slave labour especially profitable, and slavery has accordingly received a great extension, while the class of free citizens has declined. In such cases the society affected appears to the on-looker to have undergone a distinct moral deterioration. So perhaps it has, but it is important to observe that the origin of the decline is not moral but economic. The true account of the change in most of these cases is probably that a lowered sense of the value of human life or a degradation of the ideal of citizenship has come about from the rise or extension of slavery, not that slavery has come about from a lowered sense of the value of human life. For what we call practical purposes, which too often mean simply for unscientific purposes, the distinction may seem unimportant. But let us look a little further. We have assumed a case in which the deterioration proceeds unchecked. Suppose, instead, that it awakes a protest, as among the Hebrews the sharpening contrasts of wealth and poverty awoke the prophets. Suppose the protest successful and the deterioration arrested. Here a distinctly ethical ideal, a judgment of right and wrong, an expression of character, has prevailed, and, instead of being passively shaped by the social tendencies, has subdued the social tendencies to itself. How should we account for the difference between this case and the last? We should have to admit that though at the outset both communities held the same standard of social justice, yet they held it after a very different fashion. To one it was a principle, or at any rate was capable, when challenged, of becoming a principle. To the other it was a custom merely, due rather to the favour of circumstances than to the wisdom or moral qualities of the citizens—it was the innocence preserved only through the want of temptation. Thus it is not difficult to see that it may make a great difference, "practical" as well as scientific, whether a good custom owes its existence to social circumstances or to a deliberate acceptance of it as wise and right.

Thus, sociological development is not the same thing as ethical development. Social growth may produce a set of institutions of a certain value which no brain created, no human being planned, and which even those who enjoy them do not sufficiently appreciate to maintain them against attack. This is the element of the unconscious in social life. On the other hand, changes may arise from the growth of character or of a reasoned conception of the good, and so far they are due to an ethical development. From the ethical point of view institutions depending on a certain degree of ethical advance are of much more value than precisely similar institutions reached by another road, and the difference is likely to emerge in their subsequent history. For as the non-ethical changes of society affect the standard of conduct, so ethical ideas may in their turn re-act upon social organization. Such a re-action has made a large part of the history of the modern world, and analogies can be traced in ancient times, particularly when, as in the instance quoted among the Hebrews, a tenacious tribe adheres, amid the growth of civilization, to the ideals of a simpler life and a primitive social equality. An interaction of this kind is the chemistry out of which come great explosions—social, religious and ethical.

Thus the whole mass of rules and regulations whereby humanity seeks to guide its life is, on the face of it, interesting to the inquirer into comparative ethics. These rules are not all necessarily ethical in origin, nor do all those which are recognized in any given society necessarily express the living character of human beings in that society at the moment. But as showing both what the ethical consciousness has done, and what it has failed to do, they are full of interest and significance for comparative ethics. Social changes proceeding insensibly through the strengthening of forces in one direction, and their weakening in another, affect the moral standard for good or evil. Beliefs concerning the agencies underlying nature's operations supply grounds good or bad for many judgments. These are the main forces which impinge on the conception of the good, shaping and shaped by it in accordance with the degree of intelligence with which it has been formed, and the firmness with which it is held. We shall accordingly have to deal not only with custom and law, but also with the principal forms of social organization on the one hand, and of religious thought upon the other. Only with these before us shall we be in a position to trace the outline of ethical evolution.

10. We have defined our subject as the study of ethical conceptions. It might be suggested that ethics should rather study the history of conduct itself. Such an inquiry, however, would be as unfruitful as it would be limitless. We may hope with very considerable difficulty to present a fair comparison of the different moral codes that have been accepted at sundry times and divers places. But to attempt to estimate how far the conduct of men has conformed to those codes would be quite another thing. There is no social measuring rod by which we could compare degrees of obedience to law. Civilized societies, with their records of criminal statistics, might, indeed, repay investigation from this point of view, though there is no department in which statistics are more apt to mislead, and that is saying a good deal. But if we were to take ruder societies into account, the means of investigation would wholly fail. All that we can hope to do in comparing different stages of growth is to deal with recognized customs, accepted maxims, and ideas expressed in mythology, in literature, or in art. In other words, we could only hope to give the history of those ethical conceptions which are recognized as rules of conduct, and we must give up as wholly beyond our power the investigation of the degree in which conduct itself conforms to those rules.

But this is not so much as to say that we are dealing with ideas only, and not with practice at all. In Ethics there are principles and principles, and the distinction between them is often clear enough. A rule of conduct may be a genuine expression of what people actually feel and think, or it may be an ideal bearing as little relation to common practice as the Sermon on the Mount to the code of the Stock Exchange. In other words, there is a difference between the rule to which society expects you to conform and the rule which it keeps for Sunday use only. Both are rules and both may be broken. Hence to record either of them is to record not what conduct always is, but what it is thought it ought to be. But there is this immense difference: that one rule has behind it the forces of society, and so becomes in fact the normal conduct of the average man, while the other rests on the teaching of the idealist and is perhaps practised only by the best men in their best moments. This broad distinction we must keep in mind, if we would not immensely over-rate the morals of the civilized world, which, unlike the savage and barbarian world, has almost invariably a double code, one for use and the other—as a cynic would say—for ornament.

Indeed, the modern European has not one or two, but many codes claiming his allegiance—the code of religion, the code of honour, the code of his profession, perhaps the code of his class, and it may be the theories and ideals which he has imbibed from his own favourite teachers. All these codes may, and not infrequently do, conflict. The comparative student has no barometer to measure adequately their relative efficacy. All he can do is to apply his broad test and ask whether they are or are not working codes, *i. e.* rules expressing the average conduct which society expects and enforces, or rules which it is safer to disregard than to deny. But it by no means follows that when he has applied the test he may proceed to leave the highest ideals, " the high which proved too high, the heroic for earth too hard," altogether out of his account. That men have held these views is a fact of great significance for ethical science. It is also a fact of scarcely less significance, that society which cannot practise them is yet forced to do lip-service to them. The historian's point of view is here quite opposed to the cynic's. If, indeed, we were to look at the conduct of modern society in some relations, and in those relations only, we should be apt to say that it cloaked under fine words actions not less savage than those of our rude and barbarous ancestors. But let us be quite fair to ourselves, and admit that the necessity which we feel for clothing base actions in the language of high principles is, after all, a proof that those principles have begun to germinate and take root. The Assyrian king surveys with complacency the number of prisoners he has flayed, impaled, or burnt, and takes it all as a proof of the special goodness of Ashur to him and his house. We could hardly do the thing so baldly. The white man has no doubt committed great barbarities upon the savage, but he does not like to speak of them, and when necessity compels a reference he has always something to say of manifest destiny, the advance of civilization, and the duty of shouldering the white man's burden, in which he pays his tribute to a higher ethical conscience. It may be said that the amalgam is a degree more detestable, and that Sargon or Assur-Natsir-Pal had at least the merit of frankness. But this would be historically false. There was not the smallest merit in the Assyrian king's frankness, because he saw nothing to be ashamed of. The white man's hypocrisy is more revolting in itself, but, historically considered, is a hint of better things. The ethical conception has a certain value in itself, and the fact that it commands even a theoretical allegiance is not without its encouraging side. What men already know to be true will "go near to be thought shortly."

Our subject, then, must include the ideal of the apostle as well as the working rule of the lawyer. Its lower limit is the traditional custom followed by the half-unconscious savage. Its upper limit is the philosopher's reasoned and rounded theory of life. Between these extremes all the judgments that men form about conduct fall within its scope. Only we must bear in mind that there are maxims and laws which state what average men do, and expect others to do, and there are maxims which lay down what, on the basis of some ideal doctrine, they ought to do. Both alike belong to our subject, but of any given law we must know to which class it belongs, and so far as this distinction carries us — but only so far — we are dealing not merely with ethical conceptions but also with the facts of human conduct.

11. So far for the limits of our subject. A word must now be said as to methods. The nature of the evidence at the disposal of the historian of Ethics is fragmentary, and often most unsatisfactory. The difficulty is at its height in relation to primitive and savage tribes. Our object is to deal with ethical evolution, and to do this in fulness we should naturally desire to have a continuous ethical history of mankind throughout the ages. This, of course, is not available, and the anthropologist seeks to eke out the gaps in his knowledge of the past by comparison with the present, the assumption being that in the existing savage and barbarous tribes we have survivals of the state of things common to the ancestors of civilized man. How far that assumption holds good it is not possible to say with certainty. It is well to remember that a contemporary savage has been the subject of an evolution neither longer nor shorter than that which our own race has gone through. Although the rate of change has been presumably slower, it is not certain that there has been no change at all. But without being hypercritical upon this point, and admitting that by comparison between what we know of the contemporary savage and what we know of the ancestors of civilization we get the most probable view attainable of the earlier epochs of mankind, we have still to deplore the fact that our information about the contemporary savage is itself in a fragmentary, obscure, and sometimes contradictory condition. These defects arise in part from difficulties which are readily intelligible in obtaining accurate information from people speaking a foreign language as to modes of life differing greatly from any of those with which the observer is familiar. There are, however, certain special difficulties in the use of the material, arising from the nature of ethical evolution, which deserve mention here.

When we compare very different stages of culture we are apt to find a bewildering mixture of sameness and difference. We find some tribe like the Dyaks of Borneo with whom the traveller tells us it is a delight to dwell, so courteous are they, so hospitable, so full of brotherly kindliness. We begin to think there is truth in the idyllic picture of savage life so popular in the days of our great-grandfathers, until we stumble upon the fact that these same Dyaks are inveterate head-hunters, and make a practice of murdering not men only, but women and children in satisfaction of the duty of blood-vengeance, and to obtain the magic virtues inherent in an enemy's skull.[1] At once the demon picture takes the place of the angel, and the savage world is seen as a Gehenna rather than a Paradise. We forget the inconsistencies of our own civilized codes, and can hardly believe that men capable of acts so fiendish can have any trace of genuine humanity about them. The fairer view about them is that the Dyaks have a morality of their own, for many purposes as good as ours, but limited by the conditions of their life and coloured by their ideas of the supernatural. To be judged fairly, in short, both their virtues and their vices must be taken in connection with their life as a whole. What are at first sight the same ideas, the same institutions, are in reality of different value and meaning in different surroundings, and this possible source of error must always be allowed for in drawing comparisons.

In particular we must guard against misunderstandings arising from the obscurity, the inarticulateness, of primitive thought. Ideas quite familiar to us are often unintelligible to the savage, and for the words which we use to express them no precise equivalent can be found in his language, but it is a mistake to infer at once that nothing corresponding to our idea exists in the savage mind. If we look at his actions we may find reason to think differently. He acts as though he had the idea, and yet, it may be, he can give no intelligible account of it. Hence at one moment we are tempted to assert that he holds the idea just as we hold it, at another we begin to deny that he holds it at all. Now this is a difficulty which we find all along the line in the study of mental evolution. It is felt even more acutely in animal psychology. Here we are constantly tempted to believe that an animal is guided by clear ideas, while the evidence when all put together goes to prove that it is moving towards an end without clearly and fully apprehending what that end is. And when we have once grasped the possibility of this pseudo-purposive action, we are tempted to generalize it and deny intelligent purpose in all cases. As in animals, so at a higher remove in man, the primitive mind is guided by feelings, by impulses, by necessities, which it can but vaguely understand or formulate. Under their influence it builds up customs which to the inquirer seem logically to imply certain ideas and rules of conduct, but the savage himself, when tested, fails to understand these ideas. He practises them, yet to the bewilderment of the observer, he knows not what they are.

---

[1] See Ratzel, *History of Mankind*, i. 448.

This difference between rude and developed thought has an important application to Ethics. For example, statements are sometimes met with that this or that tribe is destitute of any conception of the distinction between right and wrong, and such statements are made by men who by experience should be well qualified to speak. Allegations of this kind arise, I think, from the kind of confusion just mentioned. It may be difficult or impossible to bring a savage to understand the meanings of the terms which we use to express right or wrong, virtue or vice, good or evil. Indeed, if we take highly civilized races at different periods from our own, we find a certain difficulty in fitting their ethical terms to ours. There is no word in Plato or Aristotle by which we could translate the English term "duty," for instance, but it would be an extremely unfair and unwarranted inference that the Greeks of Plato's or Aristotle's time were destitute of the sense of duty in practice. Aristotle has no word to use corresponding to our term "rights" and the Roman "jura," but he desiderates such a word, showing thereby how far developing thought may outrun language. When we come to the savage we can well understand that even the simplest ethical conceptions may be beyond his power to grasp as ethical conceptions, but it does not follow that he is without a practical sense of right and wrong. In point of fact, although very few generalizations indeed may be hazarded in the whole of our subject, we were, I think, justified in assuming above that no society can maintain itself, unless certain lines of conduct are laid down as binding by prevailing custom. If men are to live together at all they must know what they may expect and what is expected of them under given conditions.

The merest game cannot be carried on without some degree of mutual understanding, still less the more complicated business of social life. We shall meet a little later with certain primitive tribes, which are to all appearance wholly destitute of any regularly established means of maintaining order or enforcing penalties. But even in these tribes there is nevertheless a certain body of custom, and something corresponding to what we should call "public opinion" tending to enforce these customs. For example, the sentiment of the neighbours or of the tribe backs a man who avenges a murder and frowns upon a breach of the marriage laws. It is probably true, as a generalization, that there is no existing tribe without some belief in unseen powers, but it is, I think, a more certain generalization that there is no existing tribe without rules of conduct backed by the general approval of the community.

We may, I think, go a step further, and say that, generally speaking, the effect of these rules is to extend a certain measure of protection to what we ourselves regard as the fundamental rights both of person and property, to encourage mutual aid and maintain something of a social life. In these broad outlines ethical principles do not greatly vary. Indeed, the comparative study of Ethics, which is apt in its earlier stages to impress the student with a bewildering sense of the diversity of moral judgments, ends rather by impressing him with a more fundamental and far-reaching uniformity. Through the greatest extent of time and space over which we have records, we find a recurrence of the common features of ordinary morality which, to my mind at least, is not less impressive than the variations which also appear. Some of the earliest funeral inscriptions in existence might well bear comparison with those eulogies which were popular a generation or two ago among ourselves. Thus upon some of the Memphite tombs of the earliest Egyptian dynasties, we find it recorded that the deceased had been "the friend of his father, beloved of his mother, sweet to those who lived with him, gracious to his brethren, loved of his servants, and that he had never sought wrongful quarrel with any man; briefly, that he spoke and did that which was right here below." Let us hope that it was so. At any rate the pious record of the dead man's relations testifies to the virtues which they considered it appropriate to mention.

Again, if from remote but civilized antiquity we pass to contemporary savage races, we find observers praising, sometimes, no doubt, with undue partiality, those fundamental qualities without which society hardly holds together. Of the North

American Indians, for example, so experienced an observer as Catlin was able to write, "It would be untrue, and doing an injustice to the Indians, to say they were in the least behind us in conjugal, in filial, or in paternal affection."[1] Other writers in this case no doubt give less favourable judgments, and we must allow something for individual bias, but when all is said and done, we can hardly deny to any race of men or any period of time the possession of the primary characteristics out of which the most advanced moral code is constructed. Nor is primitive morality merely negative morality. Primitive man is free in giving, ready to share the little he has with his friend and neighbour, while of hospitality he makes a superstition. The duty of charity in the sense of sharing one's goods with others is in no sense pre-eminently a modern or a civilized virtue.

Yet with this identity there is a far-reaching difference not only in the actual rules of conduct, but in the way in which those rules are understood and applied, their mental framework, the basis of thought on which they repose. We have spoken of the protection given in primitive custom to rights of person and property. But we must understand that in primitive thought these are not regarded as "rights" in our sense of the term. They do not hold unconditionally, nor is it necessarily "wrong" to violate them. But there are conditions, to our thinking perhaps quite irrelevant conditions, under which they are generally respected, and the neighbours will sympathize with, and perhaps actively support, an injured man who is avenging their violation. Take, as an illustration, the case of property. In many peoples it is honourable to steal, but not honourable to steal from a guest. We all know the story of "the divine Autolycus" in Homer, who excelled all men in thieving and false swearing, an excellence which, as the bard is careful to relate, was conferred upon him by the special grace of Hermes. But I have no doubt that Autolycus' thieving and false swearing were all in accordance with rule. Probably he observed the oath when duly taken, and cheated under certain prescribed forms which would avert the vengeance of the gods, and it was no doubt his special excellence that he knew those forms to a nicety. He was evidently a man in good repute, and was doubtless honourable to those to whom he considered himself to owe a duty. There are tribes to this day in which the robbing of a guest is prohibited as long as he remains in the house, but if, after speeding him upon his journey, you can catch him up in the field, his belongings are lawfully at your disposal. These instances may serve to illustrate some of the difficulties which confront the student of comparative Ethics. He meets with the familiar ideas of civilized morality in early ethics, but he recognizes them with difficulty; they are the same, yet not the same. The broad explanation is that he is dealing with the unfolding of a germ, and not with an accretion of new elements.

---

[1] Catlin, i. 121.

If, that is to say, there is ethical progress (and whether there is such is, after all, our main question), it is to be found, not in the development of new instincts or impulses of mankind or in the disappearance of instincts that are old and bad, but rather in the rationalization of the moral code which, as society advances, becomes more clearly thought out and more consistently and comprehensively applied. For as mental evolution advances, the spiritual consciousness deepens, and the ethical order is purged of inconsistencies and extended in scope. The deity, who is at first much less than a man, becomes progressively human and then, in the true sense of the word, superhuman. Blind adherence to custom is modified by an intelligent perception of the welfare of society, and moral obligation is set upon a rational basis. These changes re-act upon the actual contents of the moral law itself, what is just and good in custom being sifted out from what is indifferent or bad, and the purified moral code re-acts in turn on the legislation by which more advanced societies re-model their structure. The psychological equipment of human beings on the one side and the actual needs of social life on the other are the underlying factors determining rules of conduct from the lowest stage upwards, but it is only at the highest grade of reflection that their operation enters fully into consciousness so that the mind can understand the grounds and value of the laws which it has itself laid down. The true meaning of ethical obligations—their bearing on human purposes, their function in social life—only emerges by slow degrees. The on-looker, investigating a primitive custom, can see that moral elements have helped to build it up, so that it embodies something of moral truth. Yet these elements of moral truth were perhaps never present to the minds of those who built it. Instead thereof we are likely to find some obscure reference to magic or to the world of spirits. The custom which we can see, perhaps, to be excellently devised in the interests of social order or for the promotion of mutual aid is by those who practise it based on some taboo, or preserved from violation from fear of the resentment of somebody's ghost, The ghost or the taboo in that case is in a sense the form which moral obligation takes at a certain stage. It supplies the savage with a theory of the moral basis, an explanation of custom and a sanction. How far it really determines custom, or how far it arises as it were *ex post facto* to justify modes of conduct to which the savage feels himself impelled without knowing why, are questions of extreme intricacy, and the answer would probably be different in different cases. At this stage it may suffice to remark that in order to understand ethical development, we must not only know what men are bidden to do by law and custom at each stage, but also the reasons which they themselves assign for doing it. We must investigate the basis as well as the standard of morals. It will be convenient to take the standard first, to trace the actual rules of conduct laid down by different peoples at different stages of culture, and proceed from the practice to the theories of conduct. When both aspects of development are before us, we may hope to form a just if an imperfect conception of ethical evolution.

12. If our data are to throw any light on this evolution, it must be through the adoption of some methods of classification distinguishing the more from the less undeveloped ethical conceptions. But here we touch our greatest difficulty. Moral progress (to assume provisionally that it is a reality) does not proceed continuously in a straight line. It does not affect all branches of the moral law simultaneously, nor does it advance step by step with the growth of civilization. Even if it be true—and it has yet to be proved—that the highest civilization possesses the highest ethical code, it is certainly not true of every intervening stage in the growth of civilization that it witnesses a corresponding moral advance. On the contrary, as has been already hinted, the very conditions of the development of society have in some cases been hostile to moral development for the time being. An advance in the arts of life may well work retrogression in the ethical sphere. Were we to take some of the tests which are often put forward as the special characteristics of civilized morality, we should be surprised to find how often a ruder society comes well out of the comparison when measured against one that is more advanced. Take, for example, the position of women. We are often told that this is a true test of civilized morality, yet in point of fact it would be by no means true to allege that the status of woman varies in all cases directly as the civilization of the society to which she belongs. In the English law of Blackstone's day, for ex-

ample, a married woman can scarcely be said to have had a legal personality, so great is the number of her disqualifications as to the holding of property, as to capacity to give evidence, as to the custody of her children, even as to her legal responsibility for crimes; and many of these disqualifications lasted on down to the present generation. If we turn to the oldest code of laws in the world, the recently-discovered laws of Hammurabi, we shall find that few of these disqualifications applied to married women in Babylonia some 2000 years before Christ; yet it would be unfair to infer that the civilization of England in the eighteenth and nineteenth centuries was on the whole inferior to that of Babylonia in the third millennium before Christ. Among many tribes of the lowest savagery, the position of women is relatively good, while there are many more advanced peoples in which their position is little better than that of slaves. Slavery itself, the most direct denial of those elementary rights which form the central point of civilized ethics, is an institution which scarcely begins to flourish except with the rudiments of civilization. In the simplest groups even distinctions of rank vanish, and there is often no authority beyond the personal influence of older and abler men. With civilization the scale of human action grows, and there arise inequalities which often place entire classes or populations at the mercy of others, and this mercy is not always found. Hence civilization knows of oppressions and even horrors from which primæval life is relatively free.[1]

The study of moral advancement, therefore, is no tracing out of a single straight line, but rather the following of a very winding curve. But even that does not express the full difficulty for the student, for it is no simple or single curve that we have to follow. We have not to deal with one development only, but with many; nor with a uniform evolution, but with a luxuriant diversity; not even with evolution alone, but with dissolution and decay as well.

How, then, are we to arrange our data? In the first place, we must try to analyze and classify the conceptions or institutions which we find. For example, we can take the multitudinous forms of the marriage tie and we can show that there are certain types about which those various forms group themselves, as though radiating from so many distinct centres. And so with other institutions. There are distinct types by describing which we can mark out the main lines of classification. Actual institutions conform to these types in varying degree, and the gradations, when completely filled in, form a chain connecting one type with another. This sort of classification is the first step.

---

[1] In earlier editions I accepted the judgment of Mr. E. J. Payne (*History of the New World called America*, ii. 344): "We follow with a sense of shame and horror man's advance through the middle and higher barbarism to the threshold of civilization, looking back almost with regret to the period of savagery when human progress exhibited a comparatively mild and beneficent aspect." But on a fuller review of the facts I think this an exaggeration. Though some of the simplest peoples, like the Punans or the Veddas, are of mild and gentle type, there are many others in whom the worst evils are conspicuous, only, for reasons pointed out in the text, on a smaller scale, and the more ordered life of advancing civilization has its compensating points, even for the oppressed.

But how are we to proceed from morphology to development, from the forms which we find to the history and causes of their growth and decay? Ethical evolution is not self-dependent but is intertwined with the entire movement of society. To understand it we must examine its correlation with other elements of the social structure, but it may as well be said at the outset that the cases in which we can say universally that a certain institution belongs to a certain stage of social culture are very rare. On the other hand, we shall find that certain types of institutions do predominate at successive stages, while above and below that stage they grow rarer till they finally disappear. What is meant will perhaps be best explained by an example. The permission of polygamy is a general characteristic of races which fall below the standard of European civilization. In such races the custom that allows it is predominant over the custom which forbids it. Yet of such races there are many in which polygamy is rare. There are some in which it is replaced by polyandry. There are not a few which are monogamous. There are some, and these some of the lowest, in which monogamy is as strict and binding as in Catholic Europe. Nevertheless throughout savagery, barbarism and semi-civilization, the permission of polygamy is the ordinary rule, while in the higher civilization monogamy is the rule. In this limited and restricted sense it is true, after all exceptions are allowed for, to say that the tendency of the lower culture is to allow, and of the higher to prohibit, the plurality of wives. We may carry the matter a step further and say that polygamy is the special characteristic of peoples above the lowest and below the highest levels of civilization, for though it occurs among lower savages it does not reach so extreme a development. Now this predominance of given types of institutions at given levels of general culture has its significance. The forces economic, ethical, social, intellectual, which tend to shape any institution are multitudinous. Some pull in one direction, others the contrary way. In such cases we seldom obtain generalizations which hold without exception. The matter is like any other which comes under the general Law of Probabilities. There are typical cases representing the normal balance of forces, and round these as a centre radiate deviating cases where the ever varying forces have gathered strength in one direction or another. Further, if there is any influence at work which alters the distribution of forces, there may be several such centres corresponding to different degrees in the working out of that influence. This is what we shall find in ethical institutions. At successive stages of general culture certain types predominate without being universal; that is to say, the forces making for a given type are apparently favoured by the general conditions of one stage and depressed by those of another.

But to study correlation effectively we need something more definite than the conception of general culture, which, indeed, strictly speaking, includes ethical development itself. We must find some element, not in itself ethical, occupying a leading place in social development, and enabling us by its changes to measure the distance which any given society has travelled from the primitive condition of man. To this end the collective stock of knowledge, the equipment of method and governing conceptions which constitute the working intellectual capital of any community will serve us best. Intellectual development in this form is the most conspicuous and most measurable feature of human evolution. For if the human race did in fact evolve from a lower type, it must have started at a zero point in this scale, and in the anthropological record we have on this side peoples whose equipment, though certainly not primitive, is exceedingly crude in shape and slender in amount, while from these upwards we have a rich development including every possible gradation. On this side again, development is unambiguous in meaning, definite in direction, and roughly measurable in degree. It is always towards fuller, more accurate, and more systematic knowledge and understanding of the conditions affecting human life and its environment. It is measurable for all races by the control which it renders possible over these conditions,[1] and in its higher stages, in addition, by the written record of intellectual activity. It is not, indeed, continuous, for it has in historical times suffered periods of arrest and decay, but it is more nearly continuous than any other known movement of humanity, and it tends to more complete continuity and greater speed. It is, in fact, a self-accelerating function. Now does this intellectual enlargement involve, upon the whole, a profounder ethical understanding, a larger scope of the moral will, a firmer grip on the purpose of life? If we could answer this question, we should have a key, not only to the historic movement of ethical conceptions but to the future evolution of the race, for man grows, and to all appearance will grow, more and more rapidly in power, but whether he will use that power for noble ends or, child-like, make of it a gigantic and dangerous toy, is unhappily not so certain.

---

[1] With certain limitations, which will be considered in their place (see below, chap. ii. pp. 39 and 41).

The relation between intellectual and moral advance is certainly not simple or direct. In the first place, as already hinted, advance in industrial arts tends to breed social inequality, to complicate the social structure, and set problems which, even with the best will, the wisdom of man finds hard to solve. In the second place, the mere diversion of energy and interest to one side of human endeavour draws on the supply available for another. When the best minds of antiquity were concentrated on the religious problem, knowledge and the arts fell into decay, and when the will and intellect revolted, they destroyed much that they are still seeking to re-build. We cannot think without rebelling, and in rebelling it is easier to undo than to re-make. Nevertheless, it is possible that the direction and the goal of the practical and theoretical reason are ultimately the same, and if so, though their paths often cross and their movements collide, we may find running through many strange kinks and quirks of reaction a certain broad parallelism of advance. To examine into these issues, we have to add to our classification of moral institutions and ideas, a classification of societies. This classification will yield us not a simple order in time, for intellectual advance is not uniform or continuous, and in the world of to-day all types except the very lowest are still represented, but an order of development. By development here we mean simply advance in the intellectual equipment of knowledge and method, and in the control of the conditions of life depending thereon; and civilizations most advanced in this respect we shall call higher civilizations. The development tends to correspond to the time order, but the relation is not exact, for development takes time but time does not always bring development. Upon the whole, however, the advance becomes more certain as it proceeds, and the time order and development order on this side of human life are a converging series.

Now our specific problem will be first to describe the types of ethical order and then to inquire into their correlation with this development. Behind these there is a third question. Suppose that we find a distinctive ethics of the higher civilizations, we have yet to ask whether this is the higher ethics. This is a question partly of fact but also partly of value, for, ethically, what is higher or lower? We are prone to take our own ethics as the highest, and so are provided with a very short and simple answer to the question, for in realized articulate knowledge, and consequently in control of material conditions, our civilization is the highest known, and its ethics are our own, and what more would you? But in reality our own ethics are riddled with inconsistencies, pretences, and absurdities, and a man who would judge whether they are on the balance better or worse than any other, must have an objective standard to guide him—that is, he must have a moral philosophy. It is not my purpose here to add a system of moral philosophy to a treatise sufficiently lengthy on the history of ethics, but I would emphasize at this point that the question of Values is quite distinct from the question of fact—the history of ethics quite distinct from its philosophy. Nevertheless, the real meaning of the history can only be apprehended when we have determined the question of value; and, in point of fact, the position which people assign to the more distinctive ethical tendencies of our own period must differ radically according to the value which they put on this or that side of human conduct and social relations. I shall therefore endeavour in its place to indicate in briefest outline the principles on which I believe the ultimate judgment of value—that is, the measure of right and wrong—to depend, and I shall apply this standard in estimating the actual moral codes of mankind. It is fair to remark, however, that it is also quite useful to apply our ordinary civilized codes to the judgment of simpler peoples, for one of our questions is how codes actually change, and in relation to this question the agreement or disagreement of any other code with that which, whether it be better or worse, belongs to the most developed society, is material to the appreciation of the course of ethical movement.

We have, then, before us three problems. We have first to classify customs and ideas relating to conduct. Next, having classified societies in accordance with their intellectual development in the sense explained, we have to inquire into the relation between ethical thought and practice and this classification—that is, to discover what sort of ethical order belongs to the less and what to the more advanced societies. Lastly, we have to examine the moral types thus distinguished in the light of a reasoned standard of value, in order to determine whether the movement is towards the higher or the lower. No theory of moral development is complete which does not deal with all these as distinct but related questions. The limits of a single treatise, of course, imply that none of the three can here be set forth with the fulness which it deserves. I have, in fact, confined myself to those aspects of ethical development which appear most essential, and on the philosophical side to such indications of a view as will enable the reader to form a fair judgment of the method.

CHAPTER II

TYPES OF SOCIETY

1. The problem of classifying peoples in accordance with their intellectual equipment falls into two quite distinct parts. In the first place, we have the multitude of "uncivilized" peoples known slightly from ancient authors but mainly from contemporary or comparatively recent research. These peoples do not speak for themselves. They have no trustworthy recorded history because they have no writing, and for the same reason they have no documentary literature, science, theology, or philosophy. Nor do they even communicate their ideas orally to the white man with ease or accuracy. Our knowledge of them is, and must be in the main, an intellectual construction of our own. They are very numerous and present a bewildering variety of types curiously intermingled, marked differences being often presented by neighbouring peoples and baffling attempts at generalization. The "civilized" peoples, on the other hand, are, for purposes of investigation, the peoples who could write and therefore have a history. Often the history is long enough and full enough to enable us to trace outlines of their development in the actual record, instead of merely inferring it by the aid of comparisons and probabilities. Their individuality, therefore, is more marked, at least for us, than that of the simpler peoples, and the centres of civilization are few in number and can be referred to by name. Thus, to deal with the uncivilized peoples we need a classification which will enable us to handle them in groups; to deal with civilized peoples one that will rather be adapted to the distinction of phases in growth which a single people may pass through within the limits of our record.

For the classification of the simpler peoples we require external marks which are easily verifiable, so that even superficial reports of them are not likely to mislead us. We can best find these in the nature and degree of the control over the environment evidenced by the industrial arts. These will not, indeed, afford a complete measure, for even among the simplest peoples some may have put more of their thought into religion or mythology, just as some have undoubtedly combined high artistic sensibility with great poverty in practical resources. But in the absence of writing it must be exceedingly difficult for any body of positive knowledge to be handed on, and without tradition no body of knowledge can grow, except in the form of traditional instruction in practical arts,[1] and intellectual equipment in the sense defined in the last chapter was confined to the body of positive knowledge and the methods and governing conceptions by which it is organized, refined and applied. Still, the measure is but rough, and in applying it further allowances must be made. One people is confined to an arid region which has debarred it from the beginnings of agriculture, but it may have made a struggle with an untoward environment which should place it above another people more favourably situated and so, in externals, better equipped. Another people, again, may have acquired from neighbours arts which they could not invent, and on a surface view we may rate them too highly. These and similar considerations have to be kept in mind in placing any people, and any classification effected at present must only be regarded as a first approximation.

The simplest method of approaching a classification is to begin with the method of obtaining food, and to correct and supplement it by attention to dwellings, clothing, implements, weapons, industry, trade and commerce.[2] With regard to food-getting we have, first, the Hunters and Gatherers—people who live on the raw products of the earth, largely, especially in the lowest stage, by gathering fruits, berries, roots or acorns, but also, particularly in a slightly higher stage, by hunting and trapping wild animals, and by fishing. There is no agriculture, and in many cases no domestic animal but the dog, and in some cases—generally owing to contact with higher civilization—the horse, or, again, the reindeer. Peoples at this stage may be called Hunters, Fishers and Gatherers, or as a simple though not always quite appropriate title, Hunters. We have divided them into (*a*) Lower Hunters, who in general live largely by gathering, have no substantial dwellings, no spinning, weaving or pottery, and no domestic animals but the dog; and (*b*) Higher Hunters, who live more by hunting proper, or by fishing, and have some, at least, of the arts mentioned. The highest of the class are the fishing peoples of the West Coast of America, who, in general culture, almost deserve to be in a class by themselves, along, perhaps, with one or two other tribes who have made substantial advances in general culture without altering their method of obtaining food.

---

[1] The fine arts are not taken into account in this classification. It is clear that, though they certainly imply some command over matter and a body of traditional knowledge and skill, they depend on other and quite different factors from those which govern intellectual development in general.

[2] The method used is explained and the results given in detail in "Institutions of the Simpler Peoples," chap. i, by G. C. Wheeler, M. Ginsberg, and the present writer.

Agriculture, in its lowest stage, is combined with hunting and gathering. It accounts at first for but a fraction of the food supply and does not involve the abandonment of nomadic habits, because the ground is only tilled while its first fertility lasts, and after one or two crops are taken a new clearing is made for which, very possibly, a new encampment is required. From this we distinguish a second stage of agriculture, when it has become the regular and main source of supply, and from this again a third stage where, in addition to agriculture, other arts and industries are developed or trade begins to play a regular part in the supply of necessaries. Where we find the larger cattle kept, and oxen used in farming, we refer a people to this stage, and generally, in assigning a people to any one of these stages, we should take its dwellings, its handicrafts, and its commercial development into account as well as the condition of its agriculture alone.

Pasture may be regarded partly as an alternative, partly as a supplement to agriculture. We distinguish a lower pastoral stage in which there is no agriculture, and a higher one in which agriculture generally exists, though in a subordinate place, and trade and the industrial arts are well developed. This stage may fairly be set on a level with the highest agricultural stage.

A settled agricultural people, practising irrigation, using the plough, having draught oxen and other cattle, acquainted with iron or bronze, copper, and gold, having substantial houses of timber or sun-dried brick, spinning and weaving textiles, and making their own pottery, is in material culture sufficiently equipped for a simple civilization, and at the top of our highest classes would be peoples so equipped. Our classification therefore extends from the lowest known savagery to the verge of civilization. But when we pass the boundary our methods need a change. The food supply can no longer be used, for all civilized peoples lived by a combination of agricultural and pastoral pursuits, or by an industry and commerce which enables them to buy the products of agriculture and pasture. No change either in the methods of tillage or trading, of sufficient magnitude to serve as a class distinction, could be pointed out until we come to the beginnings of scientific farming in the eighteenth century.

Other arts might give more help. For example, the early Oriental civilizations used copper, and later bronze, but not iron.[1] The use of important artificial substances such as glass[2] belongs to the maturity rather than the youth of these civilizations, and the Egyptians gradually built up a fairly extensive empirical chemistry.[3] Beyond these arts, if we except the compass, known to the Chinese from the second century B.C., the use of the arch in building, and the elaboration of some of the simpler machines in the art of war, we find relatively little advance in industrial appliances till we come to the first epoch of inventions in the Middle Ages.[4] But in the meantime great advances had been made in other departments of thought and knowledge, which no useful classification could leave out of account. In fact, if we look to the early civilizations themselves, what marks them out as the beginners of historic culture is not so much any new method of dealing with the material world, as the invention of writing, which at once facilitated the organization of regular government over an extended territory, and made it possible to record and hand on acquired knowledge outside the sphere of the traditional handicrafts. The use of writing is thus the best rough-and-ready mark to distinguish civilized peoples as a class. With its aid the first Asiatic civilizations in Babylonia, Egypt, and Ancient China built up the first elements of systematic knowledge, in arithmetic, geometry, and astronomy, together with some fragmentary and empirical knowledge of chemistry and medicine. If we used a name, we may call this the stage of proto-science — of systematic knowledge in its germinal elements. But from the eighth to the fifth centuries B.C., higher phases of thought appear in many parts of the world. Men begin to reflect on ethics and government as in China, on religion and ethics as in Palestine, on ultimate problems of being as in India, and finally on the whole field of knowledge in Greece.

---

[1] In Egypt iron is found in 1st Dynasty tombs but does not seem to have come into general use till the seventh century (Myres, *Dawn of History*, p. 60). The Sumerians do not seem to have known iron (King, *Sumer and Accad*, p. 50) and to have used copper rather than bronze (*ib.*, p. 72). In Crete, the introduction of metal is referred to 2800 B.C., of iron to 1200 B.C. (Hawes, *Crete the Forerunner of Greece*, p. 280).

[2] Glazed beads appear in prehistoric finds, but glass by itself not before the 18th Dynasty (Flinders Petrie, *Enc. Brit.*, "Egypt," p. 73).

[3] They knew gold, silver, copper, iron and lead, and the alloys of copper with tin and zinc, glass and glazed earthenware. They prepared silk, and had many dye-stuffs, and drugs for medicine and embalming (La Cour and Appel, *Physik*, ii. 325, 355).

[4] The Alexandrian experiments with atmospheric pressure and with steam appear to have found little or no practical application until this period.

What connecting channels there may have been to communicate this impulse, whether in reality it arose independently among different peoples, how far it was prepared by such gradual development of religious speculation which we trace in Egypt during the second millennium B.C., we do not know accurately as yet. But we have clearly to do with a phase of thought of which the oldest civilizations present little or no evidence. It has become deliberate, systematic, definite, and in a measure critical. In Greece criticism is applied to the foundations of thought itself, so that we have a philosophy, and the field of acquired knowledge is distributed into departments, each of which is systematically explored, so that we have true sciences. Finally, carried on by Arabic culture, Greek thought arrived in mediæval Europe, and we have the modern development of philosophy and science. The relation of each of these phases of thought to religion and ethics we shall consider briefly in their place. Here we may simply distinguish (1) the stage of incipient learning in the ancient East; (2) the stage of reflection in the later East; (3) the critical thought of Greece, widely affecting subsequent culture; and (4) that of the modern world, which begins to take independent shape from about the sixteenth century—movements too rich in content to be aptly characterized in abstract terms, and best identified by the peoples among whom, and the periods in which they flourished.

2. Intellectual development is not the product of one race, still less of one society alone. It is a tradition handed on with successive improvements from one civilization to another, and that is why it shows a nearly continuous advance. In the field of ethics tradition is not so potent, and it is less easy for one society to stand on the shoulders of another. In place of a continuous development, therefore, we have a succession of forms, of experiments in social life we might almost call them, which have their measure of success, and build up societies that endure for a longer or shorter time, but in the end give place to some fresh social type. Whether, on the whole, there is development on this side too, and, if so, whether it stands in any broad relation to intellectual development, is a question which we must do our best to determine. But we must first consider the forms themselves, and we must begin by examining the general character of the social union. For the broadest distinction between different forms of human society turns on the nature of the social bond itself—the tie which keeps the members of a society together while separating them in a greater or less degree from the rest of the world. Not

that the bond of union is ever simple or single. The motives that make men live and act together are diverse. But among the conditions which keep society at one and maintain its constitution in vigour certain leading forces may be distinguished, and at different stages of development one or other of these is often so prominent as to dominate the remainder and give its character to the society as a whole. These forces may, I think, be usefully grouped into three which, we may say, constitute the leading principles of social union. I will call them—

(A) The principle of *Kinship.*
(B) The principle of *Authority.*
(C) The principle of *Citizenship.*

It might be expected that I should add religion as a fourth, but it is better to say that the religious factor works all along the line, strengthening each of these three in turn with its authority, though there are some cases in which it becomes so dominant as to give a special character to the bond, and these must be noted in their place.

(A) *Kinship*, as a bond of Social Union.

Now primitive and savage society appears to rest generally on kinship. Thus, the one form of social union which may with entire confidence be called natural and universal is the relationship of mother and child. But as the children grow up they will want partners in their turn, and by an impulse which rarely if ever fails altogether in any society, will seek them outside the circle of their own parents, brothers or sisters. The simplest social organization, therefore, postulates two or more families living together, but constantly united by cross ties of intermarriage. It may be in such a society that a practice and even a binding custom arise, that a youth is given his mother's brother's daughter in marriage, while her brother, perhaps, takes his sister in exchange.[1] If so, or if the group is simply endogamous,[2] it is likely to remain compact and exclusive, and, indeed, some societies seem hardly to advance beyond this stage. A handful of families, which must in turn be united by countless ramifications of intermarriage, occupy in common a tract of jungle or bush, now camping together, now separating as the need of food determines. Their whole numbers will not amount to more than ten or a dozen families, perhaps not to more than three or four, including from twenty to sixty individuals.[1] In such a *Gross-familie*, enlarged family or kindred group, whatever governmental authority there is fuses itself with the domestic authority of the elders, and must depend largely on their personal qualities, though it may be that, whether for his personal prowess or by some rule of succession, some one man is pre-eminent among them. There is here neither government nor law in the sense of an impersonal system capable of over-riding the ties of kinship, for the ties of kinship are society.[2]

---

[1] With the Veddas marriage is either with the mother's brother's daughter or father's sister's daughter—probably the former by preference (Seligmann, *The Veddas*, p. 65). The statement of older authorities quoted in the first edition of this work, that Veddas married their sisters, was an error arising from a linguistic confusion.

[2] As the wild Kubu (Hagen, p. 130) and Semang (Martin, p. 863).

But such isolation is exceptional. Under ordinary conditions the little community will be in contact with others, while even if it enters unoccupied territory, it would, if it were fruitful and multiplied, soon extend beyond the limits of the enlarged family. In the latter case relations are maintained, and in the former may be instituted by intermarriage. Suppose two such groups as we have described to come into contact with one another, and suppose the young men of the one to find the maidens of the other fair; it is possible that, sooner or later, they will get over the antipathy of their elders, if such there be, to departure from the practice of marriage within the group. The groups will intermarry and so form a larger and looser unity. But the very first marriage is likely, if acknowledged, to fix the status of the woman of the new group and her family. Very likely her brother will take a sister of her suitor in exchange, and her family will occupy towards that of her husband the same relation as any of the families of his own group with which he might previously marry. The new family, that is, will be ranked with a portion of the existing group for marriage purposes, and come under the same rules, whatever they happen to be, permitting or restricting further unions. Thus rules of marriage at first based on blood relationship are extended beyond it, and we get the germ of the system of marriage classes. Indeed, marriage outside the group, far from being opposed, may be favoured by more far-seeing elders, who recognize in it a source of strength.[1] Be this as it may, we find above the isolated family group a stage at which the kindred is the nucleus of a wider but much looser organization generally spoken of as the tribe. The effective basis of this wider union is still intermarriage. The group may indeed, through the working of rules of kinship, become wholly exogamous,[2] in which case it will still be thought of as a kindred, or marriage may be regulated by rules cutting across the group divisions of the tribe and restricting choice without forbidding marriage within the group limits. In this case the group will cease to be a distinct kindred, and will become a local division of a larger intermarrying tribe. These are familiar forms of tribal organization, which it will be well to illustrate by a concrete case.

---

[1] Among the wild Semang, Martin (*Die Inland-Stämme der Malayischen Halbinsel*) says that the largest group known seems to have had six huts with twenty-seven individuals (p. 860). Of the Kubu, Hagen (*Die Orang Kubu auf Sumatra*) speaks (p. 93) of ten to twelve, and elsewhere (p. 95) of three to five huts. All the Veddas of a group are closely related (Seligmann, p. 68). The Botocudo groups may number ten to twenty families (Keane, *J. A. I.*, xiii. 207—The "horde" is an enlarged family—Von Tschudi, ii. 264). Some of the Australian local groups seem to be of this type and of about the same number (Howitt, p. 59). According to J. Mathew (*Eaglehawk and Crow*, p. 93), "the cohesion of a community rested entirely upon consanguinity," the aggregation of families wherein the older men had a certain amount of control constituting the community. Among the Central Australians a strong local group had about forty individuals, but owing to the marriage customs of the tribe they would not all be more closely related among themselves than with members of other groups.

[2] So far as the above account refers to the Malay tribes, it must be carefully noted that it is true only of the "wild" communities of the forest, not of the relatively settled people, who have come under Malay influence, and have frequently chiefs and something of an organized government (see Martin, pp. 876–7).

In Australia, a tribe such as the Wakelbura, which is typical of many, occupies exclusively a certain well-defined area. This is divided into lesser areas occupied by divisions of the tribe, and the subdivision may be followed till we come to the local unit consisting of men who are nearly related to one another, along with their wives who are "brought from other localities."[3] This is one way in which the tribe is divided. But there is a cross division dependent upon the marriage customs. The whole tribe is divided into two moieties which are "exogamous"—that is to say, people must marry outside their own moiety. These moieties, again, are divided into sub-classes, and the sub-classes into totems. The totem is a class of objects, *e. g.* animals or plants, with which certain human beings have a mysterious affinity. The animal has an influence over the human being, the human being can control or affect the procreation of the animal.[4] Among the Wakelbura we find such totem names as the Plain Turkey, Small Bee, Opossum, Kangaroo, Emu, Carpet Snake, etc. The totems are also exogamous.

---

[1] This is, in fact, alleged as a practice, with the motive assigned in the text, among the natives of East Victoria by R. H. Matthews (*Aboriginal Tribes of N.S. Wales and Victoria*, p. 97).

[2] As the Narrinyeri (Woods, p. 10).

[3] A. W. Howitt, *The Organization of Australian Tribes*, vol. i. part 2, 1888, p. 101.

[4] At least among the Central Australians (Spencer and Gillen, I. chap. vi). I do not know whether this holds of the Wakelbura.

Now the moiety and totem divisions go by "mother-right," *i. e.* they are inherited through the mother, and it will be seen to follow that the women and children of any local group belong to different totems and the opposite moieties to their husbands and fathers. For example, a man of the Plain Turkey totem cannot marry a Plain Turkey woman. His wife will be, say, an Emu. Her children, male or female, will also be Emus. Hence any single local group must contain members of the two moieties and of different totems. The moieties and totems will accordingly be scattered among the different local divisions of the tribe. In other words, the two kinds of division will cross one another. On the one hand we have the local division corresponding to the actual grouping of men in their daily life. On the other we have a cross division into classes and totems which spread all over the tribe. The magical bond of totemism and the practice of intermarriage connected with it[1] constitute a strand of connection holding the district local groups together.

Considering the social structure as a whole, we find a smaller unit—the local group—based on near kinship and maintained by descent from parent to child, and a wider unity—the tribe—the parts of which are kept in close relationship by intermarriage, the whole structure being permeated by what at a higher stage we should call common religious beliefs, though here the beliefs are really not so much religious as magical.[2] These appear to be the typical elements in early society.

The matrimonial class cutting through the local groups of a tribe does not necessarily lead to any governmental organization. The fictive relationships on which it rests are psychologically of feeble efficacy for the purpose of building up a compact society.

---

[1] Members of the same totem are also in many tribes bound to mutual defence—in others not, as the Arunta (Spencer and Gillen, I. 211). The association of the totem with exogamy is also irregular.

[2] Howitt, *op. cit.*, pp. 98–103. With other forms of Australian social organization and the stages of transition to a higher type I need not deal here (see Howitt, *l. c.*, p. 102, and *Tribes of South-East Australia*, chap. ii). Whether the local group is strictly exogamous depends on the rules of descent. The fundamental rule of marriage in Australia is the division of the tribe into two exogamous moieties, which, as a rule, are further subdivided into classes barring marriage between the next successive generations, or possibly two generations. The moiety and class may be reckoned by descent through the father or through the mother. Now the child generally (though not always) belongs to his father's group. Hence, if the moiety is also patrilineal the group will be exogamous, as among the Narrinyeri and the Kurnai (Howitt, *Kamilaroi and Kurnai*, p. 199). For the variation in the Australian rules of marriage and descent, see especially Howitt, chap. iii., and Spencer and Gillen, I. chap. ii, and II. chap. iii.

The relationships are all group relationships, *i. e.* no distinction in name or in tribal custom is drawn between the blood brother and the tribal brother. A group of tribal brothers (*a*) intermarrying with a group of sisters (*b*) will have, as children, brothers and sisters of a third group (*c*). This group relationship clearly does not lend itself to the family structure which hinges on the central position of the common ancestor or eldest male ascendant as representing him.[1] But there is an alternative. The kindred may grow in numbers, intermarry with others, and so form a tribal union while preserving the structure of an enlarged family, and perhaps accentuating the powers of the head. It then corresponds better to our traditional notion of a clan—that is to say, a kind of enlarged family. In the clan most familiar to us, where kinship is based on "father-right"—that is, where the child inherits its father's name and status—the government rests on the eldest male ascendant. A man and his wife, their sons with their wives, their grandchildren and great-grandchildren, may dwell together or near at hand, all ruled by the common progenitor. This is the familiar patriarchate of Genesis. But the clan-structure may also be built up on mother-right, in which case the organization is a degree more complex and less compact. Here the centre of the family is the mother, and all her children and daughters' children belong to it. But her husband is not a member of it, neither are her daughters' husbands. They are strangers and sojourners in the abode of their wives, and often have to visit them in secret and avoid all communication with their wives' relatives. This is the form of society known formerly as the matriarchate, but the term was a misnomer, since the cases in which the eldest woman rules are extremely rare, if they exist at all, while mother-right is common. The headship of such a clan is ordinarily inherited through the mother, but not by the mother, passing from her brother to her son and from her son to her daughter's son.

The clan, whether maternal or paternal, has certain characteristic features. Take, for example, the Malay Suku, the unit of the original Malay Society. Here membership of the Sukus goes by female descent, the headship is partly inherited through the mother but in part elective, and the head dispenses justice except in the grave cases for which an assembly of heads are gathered together. The clan owns all the land which its members occupy. The men who marry into it cannot touch their wives' property without the consent of her family. It protects and avenges its members and is collectively answerable for their misdeeds. These are ordinary features of clan-life, though naturally they are worked out with many differences of detail.[1]

---

[1] At the same time men of the same marriage class may stand by one another in a quarrel (Spencer and Gillen, I. p. 211) and the "tribal brothers" protect a man or woman (Roth, p. 140).

As to government, for example, there are many variations in the power of the head and the mode of his appointment. He may have absolute powers of life and death like the Roman father, or, to take an example from the domain of mother-right, like the maternal uncle or grandfather among some African people, such as the Barea and Kunama.[2] Or he may have little power to act without the consent of the clan. Thus, in the Indian law books his position fluctuates between that of a patriarch and the manager of a joint stock.[3] He may have the right at will to expel his son from the family, as apparently in the older Babylonian law, or this right may be expressly limited, as in Hammurabi's code.[4] Finally, he may himself be set aside for incompetence, as is possible at the present day in the joint family of the Deccan and of Montenegro, and could be done by the Phratry under Athenian law.[5]

The clan may also be ruled by a council, as among the Wyandots, where a council of four women was chosen by the women. These four selected a chief from among their sons and brothers, and the aggregate of the gentile councils so constituted form the council of the tribe.[6]

Again, the extent of the clan may vary greatly. Under father-right, for example, it may hold together only while the common ancestor lives, or it may continue in being after his death, his eldest son, or next brother, succeeding him, or the succession, perhaps, being determined by free choice. Some writers distinguish the two forms as the Patriarchal Family and Joint Family respectively, and both are common enough in modern India.[1] There is no necessary limit at which the family must break up, though naturally the disruptive tendencies increase with its size. In India, the presumption of the law is that the family is undivided, but this presumption is naturally weaker in proportion as the relationship is more remote. Often, as in parts of the Malay world, among the Nairs of the Malabar coast, and among the North American Indians, a vigorous joint family system grows up on the basis of mother-right. Sometimes a group of families occupy one large house, each family having its own apartments. Among the Iroquois the members of the Long House carried out their harvest in common and had a common store administered by the elder women and distributed by them among the different apartments.[2]

---

[1] Waitz, *Anthropologie*, 5, i. pp. 139–142.

[2] The theory of Manu, Book VIII, 416, is that all the property is the father's. Among the Kondhs, too, the father is absolute, the sons having no property, but with their wives and children sharing the common meal (J. D. Mayne, *A Treatise on Hindu Law*, p. 231; Post, *Grundriss der Ethnologischen Jurisprudenz*, i. 136).

[3] Mayne, 255–298.

[4] I assume in the text, for the sake of argument, that the "Sumerian Laws" do represent actual custom of early date. According to the third of these "laws," the father, by disowning his son, could expel him from house and "wall" (?). The mother could deprive him of the house and its furniture. On the other hand, the son, for disowning his father, could be thrown into chains and sold, and for disowning his mother, he could be driven out of house and town (Meissner, *Beiträge zum Altbabylonischen Privatrecht*, p. 14). In *Hammurabi* (sections 168 and 169), the father can only disinherit for a second offence, confirmed by the judgment of a court. In contracts of the period, both the older and newer usages are found (Kohler and Peiser, *Hammurabi's Gesetz*, p. 134 ff). If the Sumerian Laws form a real code, they are, as Kohler and Peiser have pointed out, distinctly more archaic than Hammurabi.

[5] Post, *op. cit.*, 1. pp. 137, 138.

[6] Powell, *Wyandot Government*, p. 61.

3. The intermarrying clans form a tribe, which, however, may be a very loose organization. Thus, among the Western Déné, we are told that there was no bond between different villages except the gentile tie which would be due to exogamy, and also probably to migration, and here there was no common head of the clan.[3] As long as the clan maintains the right of protecting its own members the gentile tie will be more effectual than the tribal. Here it is important to remark that the effects of intermarriage on the social structure differ materially according as mother-right or father-right prevails. Under mother-right the result of marriage outside the clan—"clan exogamy"—is that the man will always belong to a different clan from that of his wife and children, who are accordingly more closely dependent on the wife's brother than on her husband.[4] The result is to

---

[1] Mayne, 223–232. The ruler, after the father's death, may be the eldest male—the eldest brother, "by consent," according to Narada—or he may be chosen, as among the Todas.

[2] Morgan, *Houselife*, pp. 63, 66.

[3] Morice, "Manners and Customs of the Western Déné," in *Proceedings of the Canadian Institute*, vol. vii. p. 142.

[4] Thus the uncle (or whatever other relation the particular constitution of the clan may designate) will have the right of protecting or punishing the children, giving the girls in marriage, etc. The children will inherit from him, and in case of divorce they remain in the mother's clan (for examples, see Post, i. 72–78). The uncle may even have the right to protect the child against its own father, *e. g.* among the Barea, Bazen, and

introduce a cross division, a cleavage that cuts through family and clan life.[1] We have seen this cross division at work among the Australians, but there we thought of it mainly as a bond of union between little groups of low organization. In relation to a more developed system of kinship, however, its other effects become important. The bond that unites separate clans mars the unity of the family itself. This is very apparent where, as among the North American Indians, exogamy is based on Totemism. The members of the totem are bound to mutual defence, and, as the same totem may be found in quite remote parts—as *e. g.* there will be Bears or Beavers all over North America, there is a potential bond of union over a wide district. But equally, since the totem is exogamous, no one totem by itself can form a society. In some cases two totems are, one may say, marriage partners, *i. e.* the men of one must take wives only from the women of another. More generally there is no such restriction, but two or more totems live together and intermarry. Thus among the Iroquois there were eight totems—the Wolf, Bear, Beaver, Turtle, Deer, Snipe, Heron and Hawk.[2] All or most of these were found in each of the five " nations " or local communities into which the Iroquois were divided. In each " nation " or local community there would be Beaver men with Bear wives and children, Bear men with Beaver wives and children, the totem bond cutting clean across the family and local divisions.

This dual relationship became a means of achieving a higher political Union. The famous League of the Five Nations was founded on the fact that each nation contained the eight totemic groups enumerated above, and that the totem tie was held as strong as the local tie—so that two Hawks of different nations would have stood together against a Heron or a Bear of their own nation. This cross division formed a natural basis for union, and its strength was attested by the success and dura-

---

Kunama. Cf. Rivers, in *The Cambridge Expedition*, p. 151. In the Torres Straits a fight would be stopped, if one of the combatants saw his mother's brother on the other side. The father also had power to stop a fight, but it was less absolute (*ib.*, 144, 145). In some cases both the paternal and maternal gens were bound to help an injured member, *e. g.* among the Kwakiutl (Boaz, *B. A.*, 1889, p. 833).

[1] The children might even return to the mother's tribe, though brought up with her in that of the father—as among the Thlinkeets (Boaz, *B. A.*, 1888, p. 237). This would still further dislocate the family.

[2] Originally these formed two exogamous groups, *i. e.* Wolf, Bear, Turtle and Beaver could not intermarry, but must take a partner from one of the other four totems. But this restriction broke down (Morgan, *League of the Iroquois*, p. 83).

bility of the League. What was done consciously by the Iroquois was, if the view suggested be correct, an application of a principle which, operating in less conscious form, has contributed in large measure to the formation of organized society. The practice of marrying outside the family would cause every local aggregation of peoples to consist of individuals belonging to two families or more, and while the physical tie bound the husband to his wife's children the marriage tie bound both him and them to other families. In this we may, perhaps, find an explanation both of the wide prevalence of varying rules of exogamy and of the horrors attending its breach. If the structure of any society were bound up with the maintenance of exogamy it is in accordance with the normal processes of social evolution that a strongly-felt tradition should assist to safeguard the practice and to condemn and destroy those who break it.[1]

Be this as it may, let us note the form of social union arrived at under mother-right and exogamy. We have (1) the clan, the enlarged family, living together and connected by ties of descent through the female. (2) The marriage-relation cutting across the clans and grafting the sons and brothers of one clan on to another as husbands and fathers. On the basis of this connection we may have (3) the local community of several intermarrying clans living side by side, and (4) a wider tribal union so far as the unity of the totem or marriage class extends. There is here a possible basis for an extensive but somewhat loose organization, the totem bond tending to weaken rather than to strengthen that of the clan.

Under father-right the development is simpler. So far as exogamy prevails this will still form a bond of connection between separate stocks, but the wife now passes out of her family into that of her husband, and her children are his. Hence the division cutting across the family is no longer to be found.[2] Without it the family group is more closely knit. Yet the tie formed by intermarriage, though less strong than under the other system, would still be very real. The wife becomes a member of the family into which she marries, but she still retains relationship with her blood kindred, and cognatio—relationship through either parent—is generally recognized by the side of agnatio, strict male kinship alone.[1] A group of such intermarrying families therefore forms a community united by countless interwoven strands of affinity and blood relationship, while the component units would be more compact than under mother-right.[2]

---

[1] On the instinctive element underlying exogamy, see below, chap. iv.

[2] Among the Australian tribes, indeed, the totem (or class) divides the family as much under father-right as under mother-right. In either case, one parent is separated from the children. But "father-right" at a stage when the family is so little developed, means much less than the father-right of the clan system.

---

[1] As *e. g.* among the Celts (Vinogradoff, *Growth of the Manor*, pp. 10–12), and still more strongly among the primitive Germans (*ib.*, 135, 136).

[2] It is probably owing to the importance of intermarriage as a bond of union in early society that prohibitions of marriage generally extend over a wider circle of relationships in primitive than in advanced peoples (Westermarck, 297 ff.), and that they are often highly developed under the paternal, no less than under the maternal system. Thus, in early Rome, marriage was forbidden within the sixth degree of cognatio (Westermarck, 308); in Manu, between all Sapindas, *i. e.* to the seventh degree. Manu further opposes marriage between all relations through the male (Manu, iii. section 5. The law is not stated very stringently—a damsel fulfilling these conditions is recommended to twice-born men). The law re-appears in the minor codes. Apastamba, ii. v. 11, 15–16; Gautama, iv. 2–5; Vasishtha, viii. 1, 2; Vishnu, xxiv. § 9, 10. According to J. D. Mayne, pp. 87, 88, though Manu applies the rule to twice-born men only, it is also observed by the Kurumbas, Meenas, Kondhs of Orissa, and Dravidian tribes of S. India. In China, marriage is forbidden to all of the same name (Alabaster, 177).

Such prohibitions may, of course, be combined with clan or race or caste endogamy (prohibitions to marry outside the group concerned). The union of exogamy in one relation with endogamy in another leads to much confusion in the discussion of the subject, and obscures the functions and tendencies of each rule. Thus, the suggestion that the clan is built up by exogamy may be countered by the production of endogamous clans. This would be fallacious, since the exogamy which helps to build the clan is the prohibition of marriage between near kin, not that of marriage within the clan itself. But the working of endogamy illustrates by contrast the uniting effects of intermarriage. In the history of Rome, each step towards a wider union seems to have been accompanied by a breakdown of endogamous rules. Originally marriage seems to have been limited to the "gens" (Westermarck, quoting Mommsen and Marquardt, 368), or perhaps the "curia" (see Ihering, *Evolution of the Aryan*, p. 334). Then the patrician gentes formed a circle of intermarrying clans. The plebs obtained the *jus connubii* in 445 B.C. (Mommsen, I. p. 297), and henceforward the distinction of patrician and plebeian faded away. Further, the Latini Prisci had the *jus connubii* from an early period (Mommsen, I. p. 100; Girard, 104), and the extension of this form of Latinitas, and still more of Roman citizenship, meant at every stage a widening of the circle within which marriage was possible, till it embraced the whole free population of the empire. At each remove endogamy is the separator, intermarriage the bond of union.

The line of thought developed in the text points to the conclusion that it is the combination of the tie of intermarriage with that of descent that forms the basis of primitive society. But to lay this down as our positive conclusion would be to go beyond the evidence. There are rude societies in existence, in which no rule of exogamy holds, so that even the union of parent and child is permitted (several instances are given in Westermarck, pp. 290, 291). On the other hand, Post, *Grundriss*, i. p. 33) justly remarks that close unions are scarcely ever enjoined, unless to preserve the purity of blood (as among the Pharaohs and the Incas), or possibly to preserve the family property. Such reasons imply a society that is already well established, from which the need of intermarriage to maintain the social bond

Of course, even in early society the principle of kinship is not as rigid in practice as it is in theory. It admits of an element of fiction, since the inclusion of strangers and slaves, which is seldom wholly unknown, makes the community of blood in part at least imaginary. But it is altogether in accordance with primitive ideas that the make-believe—if the belief is properly made with all due rites and conditions fulfilled—is just as good as the reality, and so the adopted son fills the place of a real son. But though he is not really bound by the blood tie, the fictions used to constitute him one of the family are an evidence to us showing how strong the sense of the blood tie is. This sense finds its expression in the family worship, the funeral feast to the dead kindred, and the belief that none but the actual kin, or those who have with due formality been made such, may lawfully do this service to the dead. Hence the fear of calamities, of troubles from unfed and unpropitiated ghosts, if the family should ever die out. Hence, again, the duty of maintaining the family succession, the intense desire for male descendants, and the community of property out of which the funeral feasts are served. The patriarchal family is in ideal an undying unity. Unencumbered by the cross currents of feeling set in motion by mother-right, it carries the tie of kinship and the affections of the household to their highest development, while it is none the less capable of utilizing intermarriage or the ramifications of descent to extend the bonds of kinship, and so build up a wider union. Thus, as in the case of the Roman *gens*, the clan may be a much wider society than any family group connected by a known common descent. Again, distinct clans may be parts of a still wider, if looser union, bound by a sense of kinship. Thus beyond the Greek γένος we have the φρατρία, and beyond that the φυλή, each maintaining

---

has already fallen away. On the other hand, in a primitive people where the social order was only in the making, it is certainly reasonable to suppose that the objection to marriage between those of the same stock (on whatever principle kinship be reckoned) would tend to keep society together, while a preference for such marriages would tend to break it up.

The forces binding men together are in reality complex, but if we imagine kinship to be the only one, and then conceive two families living in proximity, first with an exogamous, and then with an endogamous rule, we shall be able to understand the function of exogamy. The two intermarrying families will form in all essentials the nucleus of a community. The two which do not intermarry must remain permanently separate. Each may grow, but if the in-and-in tendency persists, kinship still being assumed to remain the sole basis of union, they will tend constantly to split up, the ties between each section being so much closer than those between more distant kin. Thus the practice of intermarriage is the main condition determining the formation and governing the limits of early society.

a certain bond between its members resting on real or supposed kinship.[1] Indeed, the paternal clan has very naturally formed the starting point for the development of nearly all the civilized races, Aryan, Semitic and Mongol, and has left its marks deep in the life of the great nations which have arisen out of it.

We are led, then, to think of the simplest societies as living in "enlarged families," and of those just above them as forming larger aggregates, principally on the basis of intermarriage. Within these aggregates or tribes the groups remain though modified in various ways, and constitute at first the more vital and effective social organism, the organization of the tribe becoming important as society advances. These points are reflected in a comparison of the accounts of government which we obtain among peoples of different economic grades. Considering first the inner group, we find a considerable number of cases among the Lower Hunters where no effective government can be asserted apart from the household. The proportion of such cases to all those of which we have information falls steadily from approximately one-half among the Lower Hunters to one-tenth in the second grade of agriculture and to none in the higher economic grades.[2] Passing to the government of the tribe, we have considerable difficulty in comparing like with like.[3] But, putting together all the cases in which we find evidence of a recognized government in a definite social unity superior to the clan or local group, we find them numbering from a quarter to nearly a third of the whole among the Hunters and in the lowest agricultural grade, rising to nearly a half in the next grade of agricultural, and to over three-fourths in the highest pastoral and agricultural peoples, where, moreover, in many instances, the organization of government goes altogether beyond the tribal type and reaches that of a petty kingdom.

4. (B) The Principle of *Authority*.

The types of social organization hitherto described may be looked upon as spontaneous growths resting on the natural ties of blood relationship, intermarriage and neighbourhood. By consequence they are suited to small societies. It is true that they widen out into broader organizations; many clans form one tribal union; a number of communes form a district, and perhaps own a common chief. Sometimes even, as in the League of the Iroquois, these unions are the deliberate work of barbarian statesmen, so that something more than mere spontaneous semi-instinctive social forces come into play. But these wider ramifications have, as a rule, been loosely and feebly connected. The living energy remains with the small, concentrated unit. How, then, are larger aggregations built into compact societies? The most direct method is that of forcible subjection to a single chief or a ruling class. In the primitive tribe the power of the chief is seldom great or even assured. In the commune the headman is little more than a chairman of the folkmoot. But when a people begin a career of conquest two things happen. They themselves must have discipline, and they need a war-chief with unlimited powers. The war-chief surrounds himself with his following, his comites, who attach themselves to his fortunes, and is a simpleton if he cannot make the state of war or the fear of war so permanent that his own absolute authority becomes indefinitely prolonged. On the other hand, captive prisoners form for the first time an important slave class, or perhaps the lands of conquered peoples are left to them to till as serfs under the lordship of favoured individuals from the comitatus of the war-chief. Hence, on the one hand the decay of free institutions among the conquerors, and on the other the growth of classes within society. All the great civilizations, those of western Europe, of the far East, of Mexico and Peru, of ancient Egypt and Babylonia, seem to have experienced this stage of development. But it should be noted that the despotic system arises, and in some respects finds its most extreme developments, among people still in the stage of barbarism. For example, in West Africa, as in Dahomey and Ashanti, we find the principle pushed to the point that the king is absolute master of the persons and property of every one of his subjects. He can put any one to death at pleasure, any man may be his slave, any woman taken to his harem. The political exaltation of the monarch is often accentuated by a certain phase in the growth of religious conceptions. He becomes a man-god like the Pharaohs; his person is sacred; no one may look on him and live—finally he becomes taboo and so full of danger to his subjects that he has to be secluded, and the almighty being ends in becoming a helpless puppet in the hands of his priests. Perhaps he becomes responsible for good and evil fortune, for sunshine and rain, and if he manages the weather badly, his absolute power will avail him little and his spirit stands in imminent danger of a compulsory migration to another representative of the royal line. Where religion is too advanced for the actual deification of the king, as in western Europe, he may yet be God's representative, and so, *e. g.* the theory of divine right arose in England when feudalism passed into absolutism and the king who could not be God Himself proclaimed himself at least God's viceregent.

---

[1] Busolt, *Staats und Rechtsaltertümer*, p. 21 ff.

[2] *Simpler Peoples*, p. 51.

[3] It is not always clear, *e. g.* whether a village containing several clans or joint families should be ranked as a "tribe" for this purpose. It is probably one of a number of villages all reckoned as one tribe, so that relatively to them it is an inner group. Compared with a hunting people, on the other hand, it probably contains as many individuals and as complex an internal structure as a tribe. The comparisons we give probably underestimate, through caution on this point, the extent of the change found in passing from the lowest to the higher economic grades.

The personal power of the king, whatever the theory of absolutism may be, is limited by hard facts of human nature; monarchs, whatever their courtier priests may say, are not gods, and therefore can in fact rule in person only as much as they can themselves oversee and understand. Hence personal absolutism is for the most part limited to a narrow circle. A Cæsar or Napoleon may really supervise the affairs of a great empire, but as a general rule the absolute monarchy which I have described has effective existence only over a comparatively small area. A conqueror of a wider territory has, after all, to divest himself of most of his real authority over it. To retain a nominal supremacy he must parcel it out among his followers, or perhaps leave the native chiefs in possession as tributaries. In either case the ruler of the subject province will probably have much real independence. Where the native prince remains things will go on very much as they did before. The distant great king will be known as one who exacts a tribute, but in no other capacity. Where the king institutes one of his own followers or a great noble of the conquering people as the local governor, he retains at first a more direct control. But where the territory is large and the means of communication rude, the position of the man on the spot is the stronger. The great officer acquires much practical independence, and often succeeds in making his position hereditary, and a feudal system replaces absolute monarchy.

The conflicts between the two principles of local and central authority make up a large part of political history. At the one extreme the monarch succeeds in governing his people through officials wholly dependent on his favour. At the other he sinks into the position of being merely the first in rank in an order of practically equal and independent nobles. The latter alternative is apt to be the more depressing to the general condition of the people. But in any case the masses find themselves at the base of the social hierarchy which has now arisen to replace the simpler and comparatively equal conditions of the earlier social order. The best they can hope for is to be let alone, and in fact throughout the East the later despotism is merely superimposed on the older organizations which persist beneath its sway comparatively undisturbed, and maintain their vitality while empires rise and fall. Such a state of civilization may, as Egypt, Babylonia and China have shown, persist for thousands of years without essential change in the customs of the people, who in reality take too small a part in the life of a greater community to which they belong to affect or be gravely affected by its vicissitudes. But naturally the tendency of despotic organization is upon the whole to depress the condition of the masses: in some cases large slave populations are formed; in others a caste system arises; in others the tillers of the soil sink into one or other of the many forms of serfdom, while the conquering race are the lords of the land. All these forms of class subordination should be reckoned as expressions of the despotic principle in social organization; it is not only the form of government but the whole social structure which is infused with this dominating influence.

We are not, of course, to suppose that any society rests upon force undiluted. In the first place, as already remarked, the old forms of organization generally retain a measure of their vitality in spite of conquest. The conquerors themselves are united by ties of blood by the gentile, the tribal, or the communal bond, they have their own law and customs, resting not on force but upon the deep-lying social principles which have bound them together from of old, and which guide them by some principle of justice, if it be but in the division of the booty. In the second place, they find similar institutions flourishing among the conquered and have to make their account with these; but further, and in the third place, both from enlightened self-interest and from the inextinguishable element of self-judgment in man which makes him cling to the semblance of right most of all when he is rejecting the reality, the conqueror cannot bear to rest his title permanently on force alone. He seeks to transmute force into authority. For this he will find a means in religion and an instrument in the priesthood. But at the same time the ethical element has its opportunity, and insists with varying degrees of clearness and emphasis that the real authority of the ruler must be derived from his power to govern for the good of the people. The simple but comprehensive code of despotism merely lays down that one man is divinely appointed to determine what is best for all others, and therewith transmutes arbitrary power into righteous authority and slavish subjection into loyal service.

As to the way in which the duties of a ruler are conceived, we find, of course, every shade of difference in the empires and kingdoms of history. Thus, a military tribe of barbarians will merely raid their neighbours for slaves or for human sacrifice, or they will conquer them for the sake of tribute. But where a more civilized morality prevails, and particularly in so far as conquest ends in an amalgamation of races, and a kingdom comes to be a unity, the ethical principle of the common good asserts itself, and is enforced by religious sanctions. The lord has duties to his serfs, the feudal superior to his vassals, the king to all his subjects. Such duties are by no means peculiar to modern and Christian communities. We find them hardly less prominent in the earliest civilizations. The feudal rulers of Egypt, for example, the princes of the Nomes, always take a special credit for their uprightness as governors, their goodness to the poor, their mercifulness to the weak. A deceased governor under the 12th Dynasty asserts that he was "the staff of support to the aged, the foster-father of the children, the counsellor of the unfortunate, the refuge in which those who suffer from the cold in Thebes may warm themselves, the bread of the afflicted which never failed in the city of the South."[1] The Chinese Empire, though in form an absolute despotism, was in ethical principle an empire administered by a divine race for the good of the governed. The duty of the prince to his people was the constant theme of the classical moralists, and their teaching took tangible shape in the right of freely criticizing the emperor maintained by the censors chosen from the educated class. Thus in the settled and homogeneous kingdom we have a régime in which government originating in force is tempered by moral considerations and evolves into some form of recognized hierarchical authority. The law emanates not from society as a whole, but from its central figure and chief ruler. It expresses not the natural conditions of social life, but the will of the supreme lord, the representative it may be of the deity. Or it is the possession of a priestly caste to whom it has been entrusted by the powers that rule the universe. The essential point is that law is imposed by the ruler upon the ruled, it is a command from a superior to a subordinate, it is not any longer conceived as a custom arising out of the conditions of life among those who have to conform to it, neither is it a rule of action voluntarily adopted for the common good.

---

[1] Maspero, *The Dawn of Civilization*, p. 338.

When consolidated by history, by the gradual blending of races, and perhaps by common defence against the foreigner, the kingdom gains some of the characteristics of a free community. Having done so it may, and if it has the opportunity, probably will, start afresh on a career of conquest beyond its borders. If successful, it will build up an empire, and here, again, there will be many gradations in the tempering of force with higher social and moral considerations. Outside their borders the great kingdoms of the ancient East appear to have conquered largely to obtain slaves or tribute, and the principal duty of the local governor was to collect taxes, and forward the produce to the supreme lord at Thebes, Babylon or Nineveh. In the Persian Empire we seem to recognize the beginning of a higher stage. At least its kings interested themselves in the pure administration of justice, and Cambyses flays the corrupt judge and covers the judgment seat with his skin to be a memento and a warning to his successor.[1] The Romans went much further, and developed their conquests into something more nearly resembling a commonwealth by developing local institutions and throwing down barriers between conqueror and conquered. And in proportion as supernatural sanctions have lost strength the modern empire-states have still more distinctly felt the necessity for some other bond than that of naked force or self-constituted authority to link the scattered parts together. Thus the furthest development of the principle of authority points to the necessity for that remaining bond of social union which has yet to be described.

To sum up the results which the despotic principle—whether we regard it as authority resting ultimately on force or as force transmuted into authority—has given us—

1st.—As to the forms of Society, we have

(a) *The Absolute Monarchy*, where the king is divine and lord without restraint of the persons and properties of his subjects. This form has most vitality in relatively small and barbaric communities.

(b) *The Feudal Monarchy*, suited to wider areas where power is delegated, and the governing class form a hierarchy.

(c) *The Empire*, formed by the aggregation of kingdoms, overstepping national boundaries and exhibiting very varying degrees of unity and of local freedom.

2nd.—As to the nature of Government, the conception of a moral duty to the governed develops in proportion to the degree of unity achieved, but throughout law is conceived as based upon authority and the social system on the subordination of class to class. For this order a religious sanction is found, generally in the special association of the ruler with the deity, often also in the semi-divine character of the ruling race or caste, or, simply, in the belief in their conquering and civilizing mission.

---

[1] Herodotus, Book V. chap. xxv.

If, finally, we may endeavour to sum up in a sentence the function of this principle in human evolution, we may say that it belongs to epochs of expansion in culture and improvements in the arts of life. It is one method by which large communities can be formed with greater facilities for self-preservation and for the maintenance of internal order than the primitive clan or village commune can enjoy. We shall also find that on certain sides the order it imposes is not only more adequate but ethically higher than that attained by the clan. On the other hand, it tends to perpetuate, and in some respects to deepen those distinctions between man and man which, as we shall see, it is a main function of the ethical spirit to overcome. It avoids this error in so far as it embodies or makes room for something of the third principle with which we now have to deal.

5. (C) The Principle of *Citizenship*—Personal Rights and the Common Good.

A paternal government resting ultimately on force, but justifying its position in its own eyes by kindly consideration for the good of its subjects, is not the last word of civilized society. A type of social organization exists in which the relations of government and governed are in a manner inverted. Government is conceived not as itself the source of unquestioned authority, but as a function which certain individuals are delegated to perform as servants, "ministers" of the public as a whole. The structure of the laws, the acts of executive government, are not so many commands issued by a superior and obeyed by the people, but are customs and decisions expressing the character and depending on the resolves of the people themselves. The subjects of a government have become citizens of a state, and the citizen has rights which are no less important than his duties. These rights hold good as against the government just as they hold against other individuals, for it is a prime characteristic of the state based on citizenship that it establishes the reign of law, and subjects its own officers to this impersonal sovereign.

On this side, then, the state stands in strong contrast with the despotic empire. Its government rests not so much on the authority of a superior as on the consent of the bulk of its members. Compulsion, of course, is still necessary in the enforcement of law, but its methods are less violent and at the same time more effective. The severity of punishment diminishes, political offences become rarer, and free discussion and criticism are no longer found incompatible with social order. In the societies which have advanced furthest in this direction all classes are admitted finally to a share or a voice in the government. In some respects this description recalls the earlier tribe. For there, too, law or custom was the direct expression of the will, or, at any rate, of the character and traditions of the people. It came from them and was not imposed on them. So it is not wholly without reason that reformers struggling with the weight of the bureaucratic machinery under an arbitrary government have looked back on primitive life as an ideal state of liberty and freedom from which civilization was a luckless departure. But this is only a half truth—hardly even so much. There is very little really in common between the "liberty" of the clan or tribe and that which the law secures to the citizen in a civilized state. For, if on one side the state rests on general consent,[1] on the other side its constitution is rooted in the personal rights of its citizens. Its component members or units are not groups, but individuals. In the clan and the tribe, as will appear more fully in subsequent chapters, the individual has no legal position, scarcely even the possibility of existence, apart from the body to which he belongs. The family, the clan, or the village, or perhaps all three, are responsible to him for his safety, responsible to others for his wrong-doing, responsible, we may almost say, for his maintenance. His life is laid down by his place in them, his property is in the main a share in their property, his gods are their gods. He cannot leave them, nor can he enter into obligations which will have the effect of binding them. His position in the group is, as it were, an exhaustive account of his existence, and he has little personal life apart from it. In the state all this is greatly changed. The individual is now a responsible agent. As soon as he comes to mature years he stands or falls by himself. He and no one else is punished if he does wrong, and his engagements place no liability on any one except those who are directly or indirectly parties to them. He is free to alienate his property, to enter into contracts with whom he will, to quit his home, and even to emigrate and abandon his allegiance to the state itself. The minor groups to which he belongs are either mere local bodies created afresh by the state which delegates to them some of its rights and duties, or they are voluntary associations which the citizen himself forms by agreement with others and which fill an ever larger part in public and private life. He even forms his own church and holds his own creed, and his gods need not be those of the state. At the same time, the responsibilities of the old "natural" groups are taken over and are even amplified by the state, which owes its members protection in the exercise of all rights which it recognizes, and, generally speaking, holds itself bound at need to stand between them and sheer starvation. In a word, the state, and particularly the modern state, recognizes the claims of human personality as neither the commune nor the monarchy can afford to do. It exists for a common good, but its function is to maintain private rights.

---

[1] Even under this aspect, the state does not really resemble the primitive community as closely as it appears to do. In the latter, custom has a magical or religious sanction, and in its main lines is unalterable. In the state it is freely modifiable by legislation. Thus, in the primitive tribe, though the social structure doubtless rests ultimately on the character of the people, it does not express their free deliberate choice, for free criticism of established custom is not yet a part of their character.

There lies in this statement, however, a speculative as well as a practical difficulty, to pause upon which for a moment will help us to understand the nature and development of the state. For if government is circumscribed in its action by the rights of citizens, it would seem that a standard of conduct is being set up which is alien in origin, and may at any time be opposed in practice to the common good. The solution is found by considering in what the common good consists, and what is the foundation of an individual right. The community consists of men and women, who find their happiness in the life which makes the most of their capacities as thinking, feeling, active beings. In other words, the "good" for each man lies in the realization of what is in him, the development of his personality. Now, since this is an imperfect world, the growth of one personality may be the cramping of another. But, fortunately, there is another possibility, since by developing certain sides of ourselves, far from injuring or cramping, we stimulate and assist the similar development of others. Now what form of development is best for the individual is a question of the ultimate basis of morals, as to which we shall have something to say at a later stage. But if we judge from the point of view of the common good, as we are now doing, our choice is clear. We can see that one kind of self-development, if attempted by everybody, will be eventually destructive, while another kind will harmonize with itself and grow. In this alone is there the possibility of a good for each which is also a good for all—a common good. Calling the basis of this kind of self-development the social personality, we may define the common good as consisting in the development of the social personality, and in its name every member of society has a right to the conditions requisite for such a development, so far as they are generally attainable by social action. On the other hand, no rights exist but those which the common good prescribes. For a right is a claim which one man makes on the actions or forbearance of others, and which is sustained by an impartial judgment. But an impartial judgment is one which looks beyond the individual, and recognizes that the right claimed by one must be maintained for all. But no right could be practically maintained for all which was incompatible with the safety of the community, nor could any right be desirable for all which inflicted net loss on the community. Hence the rights of each are such as it is for the good of all to maintain.[1]

The generic character of the state, then, is that of a community whose structure and character depend on the good-will of the bulk of its members, and whose welfare rests accordingly on their loyalty and public feeling, while it is for them the source and guarantee of the free exercise of their rights as citizens. Thus, the citizen is a fully responsible agent with assignable rights and duties as member of a community. So far as the idea of the community is carried through, *i. e.* so far as the common good really is common to all belonging to it, the rights and duties must fall to all members alike, excepting only as the needs of the common welfare demand a difference. That is to say, privileges of whatever kind must depend on the exercise of functions which they encourage or render possible, and the taking up of such functions must be open to all who are capable of them. Such is the general character, in the baldest statement, of the type of civic community or state, with its two main features, the responsible individual fully seized of civic rights and obligations, and the responsible government expressing the will of the whole society in law and administration. Thus security under law and the power of the community to make and modify the law express the bare essentials of the state.

---

[1] That is, for the good in the long run. There may often be a conflict between expediency and right in the particular case, and hence it is that the opposition arises.

6. How far the idea of citizenship is pushed is a question of degree on which a great deal turns. The actual number of citizens may be but a fraction of the whole number of people dwelling in a given territory, and while as between these there may be a régime of perfect legality and perfect equality, their relations to the mass of the people may be as frankly based on force as those of any monarchical despotism. Again, within the circle of citizens there may be degrees of civic rights. These differences can only be justified ethically by the belief in an innate and ineradicable difference in capacity to meet civic responsibility on the part of members of different classes. In proportion as this belief is dissolved by experience the obligations of citizenship become universal, and the idea of citizenship as an exclusive right merges in that of personality, with rights and capacities which all may share simply as human beings. According to this conception, which must be understood from what has been said above of the social personality, what is good in life consists in the bringing out into full bloom of those capacities of each individual which help to maintain the common life. In this development lies a form of happiness for each, which does not conflict, but fits in with and promotes that of others, and does not tend to arrest, but to maintain and carry forward what may be called the growth of the collective mind—the expansion of faculty, the growth of achievement. Every human being, in proportion as he is normally developed, is able to enter into and contribute to the good life so conceived, and that he should do so is the sum and substance of all his duties to society and all the duties of society to him. But this same principle once pushed through, annuls, ethically speaking, the distinction between citizen and foreigner, for the foreigner may be quite equally capable of the same life, and, if so, is morally seized of the same rights and duties, and if, through difference of race, he is not always equally capable, still his rights and duties cannot fall to zero, but vary only with the degree of his incapacity. Hence the fully-developed state in which the principle of personality is rigorously carried through, must also find itself in definite ethical relation to humanity as a whole.

The principles thus summarized are applied with greater or less of thoroughness in the forms of state which under varying conditions and on a very varying scale have come into existence at different periods of history. We find the conception of a government resting on civic rights in the city-state of ancient Greece and Italy and of mediæval Europe; we find it on a larger scale in the country-state of the modern world. The Græco-Italian city was more than a clan, a tribe or a village community; it was an organized political society, with a regular government administering written laws. But the government was not, in relation to the free citizens, in any way despotic; law reigned, not the ruler, and sovereign law was not imposed upon the people from without, but expressed their own traditional character and laid down rules to which they adhered of their own free choice.[1] The obedience of the Greek to law was a moral obedience, the loyalty of free men to an authority which they recognized as a moral authority. "Though the Lacedæmonians are free," says Demaratus to Xerxes, "yet they are not free in all things, for over them is set Law as a master, whom they fear much more even than thy people fear thee. It is certain at least that they do whatsoever that master commands; and he commands ever the same thing—that is to say, he bids them not flee out of battle from any multitude of men, but stay in their post and win the victory or lose their life."[2]

Thus law in the Greek state expressed not the will of a superior but a moral authority, freely recognized by free men, and equally binding on the ruler and the ruled. On this side the city state was contrasted, as the Greeks were fully conscious, with oriental despotism. On the other hand, in its many-sided development of judicial, executive and legislative organs, it stood far removed from the primitive community. The archaic institutions of early society—the clan, the phratry and the tribe—gradually lost their functions. They ceased to be responsible for their members, and the entire execution of justice passed into the hands of the state. In the most advanced cities new divisions were formed on a territorial basis to replace the old spontaneous associations. The individual was responsible before the law for his own acts, and—at least as far as he was a free citizen—could carve out his own career. He was eligible for the highest office, and Aristotle justly defined the good citizen as the man who could both rule and be ruled with a view of life at its best;

---

[1] It is an interesting point, as illustrating the transition from the primitive subjection of the popular will to tradition to the later stage of civic freedom, that throughout the best period of Greece the established law retained much of the primitive sanctity attaching to old custom, so that, even at Athens, the Assembly could not finally decide upon changes in the law, but had to refer such innovations to a body selected from the sworn jurymen for the year, while the proposer of a law, held by them to be unjustifiable, was liable to prosecution (see Sidgwick, *European Polity*, pp. 175, 176).

[2] Herodotus, Book VII. chap. civ. (Macaulay Tr.).

indeed, in no other political system have public institutions offered greater scope for individual initiative, nor have collective duties been more generously conceived to meet human needs. Aristotle could define a Greek state as an association for maintaining a good life for its citizens. The object of political institutions was frankly declared to be "that we may make the citizens good." Untroubled by any conflict between the secular and the spiritual power, the Greeks could readily conceive a political society as an association for all the principal purposes of life that are not covered by the smaller association of the household. On this side their ideal of the state has never since been equalled.

On the other hand, the idea of association was not pushed through. The state was limited to the narrow circle of the freemen, and even within the freemen the oligarchies drew sharp distinctions. Of the true society which formed the Spartan state, only a few thousand Spartiates were really members; the Perioeci and Helots had nothing to do with the Spartan constitution except to conform to its ordinances. The democracies opened citizenship to a wider circle, but here again the great fissure between freeman and slave was maintained. But so far as the non-free were concerned the distinctive character of the state disappears. The free Athenian demos rules the enslaved mass;[1] the Spartiate rules the Perioecus and the Helot no more by a principle of right than the Great King his motley crowd of subjects. So far as the state includes an unenfranchised population, it abandons the principle of right and falls back on that of force. But this was not the only drawback to the Greek πόλις. Its limited scale and the incapacity of the Greeks for a higher form of union proved the opportunity of Macedon and the destruction of Greek freedom. At Rome the incapacity of the city state to extend its borders and yet maintain the vigour of its free constitution led to the extinction of the Republic; the Empire could only be consolidated by a bureaucracy. The mediæval cities escaped slavery. Indeed, as providing a refuge for the fugitive serf they played a part in the movement towards general freedom. But in other respects they repeated many of the features of the Greek πόλις. We find similar conflicts between oligarchic and democratic tendencies. There is the struggle of the crafts as against the merchants, and the counter tendency of the crafts in their turn, when once fully enfranchised, to become exclusive corporations. There are difficulties with feudal nobles and with king or emperor from which the Greek state was free, and a consequent exaggeration of the troubles of faction and an even greater tendency than in Greece to have resort to the plenary powers of a *tyrannis*. There is the same limitation of area, and the same difficulty of combined action—witness the inertness of the Dutch cities in rendering aid to one another against Philip as compared with the determination shown in the defence of each city individually. Internal faction and external exclusiveness together wrote the doom of the mediæval city.

---

[1] It is not, however, always sufficiently recognized that the Athenian democracy did tend to make the position of slaves more tolerable (see below, chap. vii.).

7. The experiment of founding a state was to be tried over again in the modern world on a larger scale, when the concentration of powers in the hands of the monarch had consolidated the more advanced nations, while personal freedom had, on the whole, been secured for the mass of the people and the religious schism had undermined the structure of ecclesiastical authority. This concentration meant, in the first instance, a period of absolutism, and the reaction against absolutism has filled the greater part of the modern period. Ethically considered, this re-action has two sides. On the one hand, the government comes to recognize that its position is only justified by its function in serving public order and the general happiness. The doctrine of the plenary power of the king, emerging though it did readily enough from the feudal conception of the supreme over-lord when the feudal checks were removed, was nevertheless alien to the temper of Europe and the spirit of modern Ethics. The doctrine of the ultimate supremacy of the people and the delegated power of the supreme ruler had held its place in the civil law and had never wholly disappeared from the academic world, and in the eighteenth century the world of thought was fully ready to accept the doctrine that a government holds power only by its capacity to serve the people's needs. On the other side, the principle of personality won the successive recognition of one right after another—right to the protection of the tribunals or immunity from arbitrary punishment, freedom in religious matters, first freedom of conscience, afterwards freedom of expression and of public worship, the right to discuss and criticize acts of government, the right of meeting and association, ultimately the political right to secure these liberties by an indirect share in the government of the country—all the rights which, taken together, make the modern state what it is.

In so far as it rests on these and similar rights, while they in turn depend on the guarantees which orderly government can give, the modern state depends not on forcible control, but on the assent of the great bulk of the governed. Its principle, needless to say, is not always consistently carried through. In particular, governments have almost everywhere waged war with the spirit of nationality where it has come in their way, and have preferred to wander far from the principles of equal political freedom rather than seek some method of accommodating themselves to an inconvenient but very hardy sentiment. Otherwise there is no such permanent cause of internal division as marred the life of the Greek states. Nor has faction ever shown itself so serious in our world. The larger scale of the modern state gives it more prospect of permanence. But here, again, its ultimate fate must depend on the conduct of its external relations. The internecine feuds which ravaged Hellas have at times repeated themselves on the larger scale of Europe, and threaten now to take in the whole civilized world. And in modern, as in ancient, times military ambitions and internal liberty are hard to reconcile. The future of the State is bound up with Internationalism. If the rivalries and jealousies of the civilized nations can be so far overcome as to admit of combined action in the cause of peace, there is every reason to expect that within each nation the rule of right will be maintained and developed. If, on the contrary, wars are to give way only to periods of armed peace, each country alike must gradually relapse into the rule of a dictatorship. The country state, therefore, can hardly be the final word of politics, but if progress continues it must consist in the quickening into active life of those germs of internationalism which the best statesmen of the nineteenth century helped to bring into a precarious existence.[1]

We have thus distinguished three principles of social union, each tending to work itself out in more than one form of social organization, according to the varying conditions upon which it operates. We have had—

(1) The Blood Tie, Kinship, and Intermarriage, from which sprang the Clan and the Tribe. Of these there were two great divisions:
  - (*a*) The Maternal Clan.
  - (*b*) The Paternal Clan, the Patriarchate.

In both classes we find the Joint Household, which may be regarded as at once a clan and a family.

---

[1] Written in 1905.

(2) Despotism—the Principle of Force and Authority.
    (*a*) Personal—Military or Bureaucratic Despotism.
    (*b*) Feudal Monarchy.
    (*c*) The International Empire.
(3) The Principle of Citizenship, the Common Good and Personal Right, from which spring
    (*a*) The City State.
    (*b*) The Country State.

The types of social organization that have been sketched are not mutually exclusive. A despotic oriental monarchy may rule over a hundred thousand village communities, each consisting of a dozen or a score of patriarchal households in which some residual traces of mother-right and totemism may still be found. An independent commune may rest on a clan system founded on mother-right, and such clans may, like the Iroquois, build up a federation resting on assent rather than force, and so correspond rather to a state than to a despotic kingdom. What we have distinguished are (1) certain principles of organization which, when they work out unencumbered by other principles, form (2) distinguishable types of social structure—types which we may take as landmarks by reference to which we may place other social forms. These types may co-exist as constituent parts of a larger order, or may be blended with one another in various ways. It follows that we cannot say that one of these forms succeeds another in serial order as we ascend the scale of culture. The history of society, unfortunately, is not so simple. All that we can say with some confidence is that the three principles distinguished and the forms of social union arising out of them preponderate at successive stages in the order named. That is to say, that the lowest form of social organization is the group loosely connected with other groups of the same tribe; that at a somewhat higher stage tribal government develops; that above these societies are found organized kingdoms; and that the "state" in the true sense is developed only among peoples of the highest civilization. There is, as it were, a mean point in the scale of social advance belonging to each principle, and though it extends far above and far below we place the principle in the series by referring it to this point.

CHAPTER III

LAW AND JUSTICE

1. To the civilized man it seems the merest truism to say that the business of Government is to make and execute laws, to see that crime is suppressed, and that its subjects are maintained in possession of their just rights. Not only so, but the broad lines upon which justice is administered are to him so familiar and seem so clearly marked out by reason and common sense that if he were to think of their origin at all he would naturally imagine that here, if anywhere, we had to do with simple and elementary moral ideas, implanted in men by nature, and needing no training nor experience to perfect them. Thus, what could be more obvious, to begin with, than the distinction of civil and criminal justice? A may trespass upon the rights of B, but he may do so without fraud, violence, or any criminal intent. In such cases the loss suffered by B must be made good, but no further punishment should fall upon A. That is, there is ground for a civil action. Or, on the other hand, in injuring B, A may have committed an offence against the social order. In that case he must be punished as a criminal, and is not to escape merely by making good the loss inflicted on B. He has offended society, and society insists on punishing him. But, further, if A is a wrong-doer, it must be proved that he is a responsible agent. He must have done wrong with intention, and, if so, he alone ought to suffer. Socially, no doubt, his fall must affect his innocent wife and children, but this is a regrettable result, not a consequence which the law goes about to inflict. Lastly, whether in a civil or criminal case, the function of the law is to set up an impartial authority, before whom the question is argued. Both sides are heard. Evidence is cited, and witnesses called, whose testimony the court is free to sift and weigh. Formalities and rules have to be observed, but apart, perhaps, from some which are archaic, they are devised mainly as safeguards against wrongful decisions, and the real business of the inquiry is to get at truth as to the material facts. In the end, the decision being given, the court can freely use the executive power of Government to enforce it.

Elementary as all this sounds, it is, historically speaking, the result of a long evolution. The distinction between civil and criminal law, the principle of strictly individual responsibility, the distinction between the intentional and the unintentional, the conception of the court as an impartial authority to try the merits of the case, the exclusive reliance on evidence and testimony, the preference of material to formal rectitude, the execution of the court's decision by a public force—all are matters very imperfectly understood by primitive peoples, and their definite establishment is the result of a slow historical process. Perhaps no other department of comparative ethics gives so vivid an idea of the difficulty which humanity has found in establishing the simple elements of a just social order.

2. The growth of law and justice is pretty closely connected in its several stages with the forms of social organization that have been described. In some of the lower races there is, it would appear, scarcely anything that is strictly to be called the administration of justice. Private wrongs are revenged by private individuals, and any one whom they can get to help them. The neighbours interfere in the least possible degree, and how far a man's family, or the wider group to which he belongs, will stand by him, is a question which is decided in each particular case as its own merits, or the inclinations of those concerned, direct.[1]

---

[1] Take as an example the Andamanese, who live in small communities numbering from twenty to fifty individuals, and have no distinct institutions for the maintenance of order or the settlement of disputes. Each group, indeed, has a chief, but his powers are extremely limited, extending to little beyond the right of calling the people together and exercising over them what influence he can. There is no form of covenant, no oath, no form of trial, no ordeal. Justice is left altogether to the aggrieved party, who shoots an arrow at his enemy or throws a burning faggot at him, the neighbours playing their part in the matter by running away until the quarrel is over, which at any rate prevents the spread of the mischief. The law of vengeance is not developed. A relative may avenge the death of a murdered man, but it is not necessary that anything should happen. The neighbours are afraid of the murderer, and he finds it desirable to absent himself for a while. Not uncommonly a man will show his resentment, not by punishing the wrong-doer, but by destroying all the property that he can lay hands upon, including his own. The chief's property alone will be respected. In other words, the Andaman islander, like the Malay, is apt to run amok, and such men are not resisted because they are held to be possessed. Conjugal fidelity among this monogamous people is enforced by the husband, but in punishing the guilty party he runs the risk of retaliation. There appears, however, says Mr. Man, to be an understanding that the greater the provocation offered, the less is the risk incurred by the injured person or his friends, in avenging the wrong—a sentiment which very aptly characterizes the degree in which justice is recognized as a public matter at this stage of social development. There is no definite redress, but an injured man may hope to carry the support

But even at a very low stage this uncertain and fitful action begins to take more definite shape. There are two possible lines of development, and it will be convenient to begin by tracing them separately, though in actual fact they are intertwined. On the one hand, the method of self-redress may be organized and reduced to system under a regular code of recognized custom. On the other, the maintenance of order, the settlement of disputes, the punishment of offences, and the redress of wrongs may be undertaken, partially or completely as the case may be, by the community acting through its leading men, its chief, or, finally, through a regularly constituted organ for the administration of justice.

3. As a system vengeance, like other systems, is a product of development. On the whole we hear less of it among the most "primitive" men than among those which stand somewhat higher. Many of the jungle people of Asia, living under the simplest conditions possible, appear to be peaceful, gentle folk, quarrelling and fighting but little among themselves, and if they have no regular law or government, scarcely seeming to feel the need.[1] In such little groups, where society can hardly be said to extend beyond the circle of the near kin, all well known to one another and standing in definite personal relations, the con-

---

of the neighbours with him in rough proportion to the strength of his case. Injuries done by a member of another tribe lead to more regular feuds and are avenged, if possible, by a night attack upon the neighbouring camp, which, if successful, results in the slaughter of the males and the destruction or appropriation of the property of the vanquished. The women of the enemy, it may be noted, are not deliberately killed; at any rate, their death is not, as among some more advanced peoples, a matter for boasting; and the child captive would be treated kindly with a view to its adoption by the captors' tribe. Cannibalism, the frequent concomitant of savage warfare, is held in horror, but is attributed by the southern Andamanese to the inhabitants of the northern island (E. H. Man, *Journal of the Anthropological Institute*, vol. xii. p. 108 *seq.*).

[1] Thus the Punans of Borneo, who support themselves on the wild products of the jungle and have no house, but a shelter of palm leaves supported on sticks, live in small communities of twenty to thirty adults, for the most part near relatives, under the mild and unauthoritative leadership of one of the older men. "He dispenses no substantial punishments," and if one or more of his band are displeased with him, they withdraw and form another band. The Punan will avenge the murder of a relative, but he seems rarely to fight with other Punans, unless instigated by the more civilized village people with whom he maintains relations (Hose and McDougall, ii. 180–183). Most of the Eskimo, and some other peoples of the North-West, are very peaceable. Among the Point Barrow Eskimo, Murdoch witnessed no quarrel in two years residence (*R. B. E.*, 1887, p. 41). In some cases, among the Western Eskimo, quarrels are settled by a boxing match (Bancroft, p. 65).

sequences of any quarrel must depend mainly on the character of individuals and particularly on the resoluteness or weakness of the older men who take the lead. Such societies, of course, have their customs, which are doubtless felt as binding by their members, but if we mean by law a body of rules enforced by an authority independent of personal ties of kinship and friendship, such an institution is not compatible with their social organization. They may be more fairly characterized negatively by saying that they know no law in our sense, than positively by attributing to them the custom of self-redress.

Other tribes equally primitive are less peaceable. Among the Lower Californians "every man is his own master and administers justice in the form of vengeance as best he is able.[1] Among the Botocudos, Zu Wied gives a graphic account of the rise of a quarrel—how it begins, perhaps, with a father striking a child, how its mother rushes to protect it, he turns upon her and her brother comes to her help. Presently both families are engaged with the relatives on both sides, and the affair assumes the proportions of a feud.[2] It is, in fact, through the bond of kindred that retaliation develops into a system, and we find it at its height where a number of kindreds live together, intermarrying, forming one society, even recognizing a common government for certain purposes, but each retaining jealously the right of protecting its members. The leading characteristics of this stage of development are two—(1) that redress is obtained by retaliation, and (2) that owing to the solidarity of the family the sufferer will find support in obtaining the redress that he seeks. The individual man, woman or child no longer stands by himself or herself, but can count with considerable certainty on the protection of his relatives, who are bound to avenge a wrong done to him, or to stand by him in exacting vengeance, by every tie of honour and religion. Thus vengeance develops into the blood feud. "He that sheddeth man's blood, by man shall his blood be shed," is the earliest law given in the Old Testament, and on this point the Old Testament may be said to be a faithful reflection of the historical facts.

Though the blood feud is an expression of vengeance, this vengeance is by no means wholly without regulations and rules of its own. There is a rough justice recognizable in its working, though it is not the justice of an impartial third person surveying the facts as a whole. There is no question of a just judge rendering each man his due, but rather of a united kin sympathizing with the resentment of an injured relation when expressing itself in certain traditional forms. Justice as we understand it—the rendering to each man his due as judged by an impartial authority—is not distinctly conceived as a social duty in primitive ethics, and that is what, morally speaking, differentiates the primitive ethical consciousness from the ethical consciousness at a higher stage of development. Yet primitive ethics works upon rules in which a certain measure of justice is embodied. Thus, in the first place, custom prescribes certain rules of retaliation which are recognized as right and proper and have the approval of the neighbours and clansmen. The simplest and earliest of these rules is the famous *Lex Talionis*, "An eye for an eye, and a tooth for a tooth," familiar to us from the chapter of Exodus, but far earlier than Exodus in its first formulation. We find it, like many other primitive rules of law, in the recently discovered code of King Hammurabi,[1] which is earlier than the Book of the Covenant perhaps by 1300 years, and we find it at the present day among people sociologically at an earlier stage of development than the Babylonians of the third millennium before Christ. We find it applicable to bodily injuries,[2] to breaches of the marriage law,[3] and perhaps we may say in the rules of the twofold restitution for theft and in the symbolic form of mutilating the offending member even to the case of offences against property.[4] In some cases the idea of exact retaliation is carried out with the utmost literalness—a grotesque literalness sometimes, as when a man who has killed another by falling on him from a tree is himself put to death by exactly the same method—a relation of the deceased solemnly mounting the tree and, much one would say at his own risk, descending upon the offender.[5] More often, of course, vengeance is simpler. Stripes, mutilation or death are inflicted without any attempt to imitate the original offence, though there may very well be a grading of the vengeance in proportion to the original wrong. The homicide is slain, the adulterer speared, beaten, or mutilated, the thief slain, enslaved or forced to make restitution, the defaulting debtor enslaved or flogged.[1]

---

[1] Bancroft, p. 564.

[2] Zu Wied, vol. ii. p. 43.

---

[1] Hammurabi, § 195. If a man has struck his father, his hands one shall cut off.

196. If a man has caused the loss of a patrician's eye, his eye one shall cause to be lost.

197. If he has shattered a patrician's limb, one shall shatter his limb.

200. If a man has made the tooth of a man that is his equal to fall out, one shall make his tooth fall out, etc.

[2] See instances in Post, ii. 240, 241.

[3] The adulterer has to yield his own wife to the injured husband (*loc. cit.*, cf. Waitz, iv. 361).

[4] The thief loses eye or hand. Similarly the adulterer or ravisher may be castrated—and with this we may perhaps compare the punishment of the unchaste wife by prostitution, as among the Kamilaroi (Howitt, p. 207). Cf. Fraser, *Tribes of N. S. Wales*, p. 39. The perjurer loses his tongue or the "schwurfinger" (Post, *l. c.*).

[5] In the *Leges Henrici*, Pollock and Maitland, vol. ii. pp. 470, 471. Mutilation is punished by retaliation among the Barea and Kunama, the Whydah, Bogos, and Congo people (Post, ii. 241).

4. But at a fairly early stage in the growth of social order a fresh principle is introduced tending to mitigate the blood feud and so maintain peace and harmony. For the special vice of the system of retaliation is that it provides no machinery for bringing the quarrel to an end. If one of the Bear totem is killed by a Hawk, the Hawk must be killed by one of the Bears, but it by no means follows that this will end the matter, for the Hawks may now stand by their murdered clansman and take the life of a second Bear in revenge, and so the game goes on, and we have a true course of vendetta. Accordingly, peaceable souls, with a view to the welfare of both families, perhaps with the broader view of happiness and harmony within the community, intervene with a suggestion of peace. Let the injured Bears take compensation in another form, let them take cattle or other things to make good the loss of the pair of hands which served them. In a word, let the payment of damages be a salve to vindictive feelings. In that way the incident may came to an end and peace will reign.[2] When such a practice becomes a customary

---

[1] *e. g.* among the Cherokees the defaulting debtor was tied to a tree and flogged (Waitz, iii. 131). In other tribes disputes as to money matters were regulated by arbitrators chosen by the conflicting parties. Those who were prevented by illness or any real obstacle from paying their debts, were not compelled to do so, but those who could pay and did not fell into general contempt.

[2] Among the Australians we have a still simpler and ruder form of atonement, suited to the low economic development of the people. The offender must give satisfaction in kind, *e. g.* having injured a man he must submit himself to a blow on the head or a spear thrust. Thus, among the Whayook, should a man wound a fellow tribesman, custom requires him to present himself to the sufferer for a similar wound (Curr, *The Australian Race*, vol. i. p. 339). Among the Koynup and Etecup he must allow himself to be speared on the leg (*ib.*, p. 349). Among the Milya Uppa any "complaint" is wiped out by the offender allowing the sufferer to strike him on his head (J. A. Reid, in Curr, vol. ii. p. 179). Similarly among the Geawegal, Waimbio, Wurunjerri, etc. In many cases, too, wrongs by a member of one local group upon another are wiped out by the offender standing a spear-throwing ordeal in the presence of both parties; *e. g.* among the Yuin (Howitt, p. 342, where, though it was a case of homicide, the avengers were satisfied with the first drawing of blood). Generally Messrs. Spencer and Gillen remark that a savage regards any offence as wiped out by a suitable proffer of atonement (*Northern Tribes*, p. 31). This form of atonement leads, as we shall see later, to a certain amount of public or quasi-public intervention.

institution we enter upon the stage of composition for offences, a stage peculiarly characteristic of the settling down of barbarous tribes into a peaceable and relatively civilized state, and especially of the growth of the power of a chief whose influence is often exerted to enforce the expedient of composition upon a reluctant and revengeful family.[1] As the institution takes shape a regular tariff is introduced, so much for an injury, so much for the loss of an eye, so much for a life. Often a distinction between classes of crime appears. For some it is the rule that composition should be accepted. Others are recognized as too grave to be washed out except by blood. Thus, among the German tribes, murder and rape excited blood revenge, while other injuries were punishable by fine, and the fine is significantly called "faida," as being the feud commuted for money.[2] The distinction lasted into the Middle Ages, even in a period when the fine or a part of it went to the king. Our *Leges Henrici* still distinguish emendable offences, in which sacrilege and wilful homicide without treachery are included, from unemendable offences such as housebreaking, arson, open theft, aggravated homicide, treason against one's lord, and breach of the church's or the king's peace.[3] These are crimes which in the Anglo-Saxon term had no bôt—no bôt or money payment atoned for them—they were bôt-less, boot-less. Even when the bôt was payable it stood at first at the discretion of the injured family to accept or reject it, and we find the Germanic codes in the early Middle Ages setting themselves to insist on its acceptance as a means of keeping the peace.[4] If the fine is not forthcoming, of course the feud holds.

---

[1] But it originates much earlier. We do not, indeed, find it except in the Australian form of the expiatory encounter among the Lower Hunters, but we have twenty-five instances among the Higher Hunters (*Simpler Peoples*, p. 80). The principle extends to tribes standing as low as the Central Californians, *e. g.* among the Patawat, the murder of a man was punished by a fine of shell money—ten strings for a man, five for a squaw (Powers, p. 98).

[2] Waitz, *Deutsche Verfassungsgeschichte*, i. 437, who, however, denies that the fine was a merely buying off of revenge.

[3] Post, *Afrikanische Jurisprudenz*, ii. 30, gives a list of ten African peoples in which composition is allowed for all offences. In three others it is allowed for all cases except the gravest, such as murder; among the Kimbundas, for all except sorcery and treason; among the Barolong for all except rebellion, and among the Kaffirs for all except treason, sorcery, and sometimes murder. In mediæval England there was much local variation in the fines. At Lewes the fine for bloodshed was 7/4, for adultery 8/4, the man paying the king, the woman the archbishop. In Shropshire the fine for bloodshed was 40/-. In Worcestershire rape was not emendable (Pollock and Maitland, ii. 457).

[4] Charlemagne's capitulary of 802 forbids the kin to increase the evil by refusing peace to the manslayer who craves it (Jenks, *Law and Politics*, p. 102). In England, down to the ninth and tenth centuries, the aggressor

But when injuries are being assessed, not only must there be a distinction between the injuries themselves, but also between the persons injured. There must be a distinction of rank, age, sex; a free-born man is worth more than a slave, a grown-up person than a child, generally speaking a man than a woman, a chief or person of rank than a free man. And so we have the system of "wergilds" familiar to us in the early stages of our own history,[1] and again recognizable in the code of Hammurabi.[2]

---

might elect to bear the blood feud, but by an ordinance of Alfred, the injured party might have the help of the ealdorman to enforce payment (Pollock and Maitland, i. 47).

[1] Among the Germanic peoples, in the early mediæval period, the wergild of a noble was generally double that of a free man. A post in the King's service trebled the wergild of the official's hereditary rank. The Liti (Hörige) had, as a rule, half the wer of free men, whilst slaves, according to strict principle had none, but only a valuation. In fact, however, some barbarian codes assigned them half the wer of a litus (Schröder, pp. 345, 346).

[2] Hammurabi illustrates two subsidiary points. (1) An offence against a man of higher rank may be unemendable (*i. e.* punished by retaliation), while the same offence against a man of lower rank is commutable. (2) The rank of the aggressor may influence the punishment as well as that of the sufferer. Injuries to eye or limb of a patrician are punished by retaliation (sections 196, 197), but in section 198, "If he has caused a poor man to lose his eye or shattered a plebeian's limb, he shall pay one mina of silver." Further, by section 199, the slave has no wer—for the same injury the aggressor "shall pay half his price." Similarly for the loss of a tooth (sections 200, 201). The provisions for assault and homicide are as follows—

202. If a man has struck the strength of a man who is great above him, he shall be struck in the assembly with sixty strokes of a cow-hide whip.

203. If a man of gentle birth has struck the privates of a man of gentle birth, who is like himself, he shall pay one mina of silver.

204. If a poor man has struck the strength of a plebeian, he shall pay ten shekels of silver.

205. If a patrician's servant has struck the strength of a free man, one shall cut off his ear.

206. If a man has struck a man in a quarrel, and has caused him a wound, that man shall swear, "I do not strike him knowing," and shall answer for the doctor.

207. If he has died of his blows, he shall swear, and if he be of gentle birth he shall pay half a mina of silver.

208. If he be the son of a plebeian, he shall pay one-third of a mina of silver.

209. If a man has struck a patrician's daughter and caused her to drop what is in her womb, he shall pay ten shekels of silver for what was in her womb.

210. If that woman has died, one shall put to death his daughter.

211. If the daughter of a plebeian through his blows he has caused to drop that which is in her womb, he shall pay five shekels of silver.

212. If that woman has died, he shall pay half a mina of silver.

213. If he has struck a patrician's maidservant and caused her to drop that which is in her womb, he shall pay two shekels of silver.

214. If that maidservant has died, he shall pay one-third of a mina of silver.

In one form or another the system of composition prevails or has prevailed almost to this day over a great part of the barbaric world, among the North American Indians,[1] in the Malay Archipelago,[2] in New Guinea, among the Indian hill tribes, among the Calmucks and Kirghis of the steppes of Asia, among the rude tribes of the Caucasus, the Bedouin of the Arabian desert, the Somali of East Africa, the negroes of the West Coast, the Congo folk of the interior, the Kaffirs and Basutos of the South.[3]

5. Organized vengeance, then, may be exacted by retaliation or compounded by money payments. In either method a rough justice is embodied, but it is justice enforced by the strong hand. Even graver differences separating barbaric vengeance from civilized justice have now to be mentioned. These differences are

---

218. If the doctor has treated a patrician for a severe wound with a lancet of bronze and has caused that patrician to die, or has opened an abscess of the eye for a patrician with the bronze lancet and has caused the loss of the patrician's eye, one shall cut off his hands.

219. If a doctor has treated the severe wound of a slave of a poor man with a bronze lancet and has caused his death, he shall render slave for slave.

220. If he has opened his abscess with a bronze lancet and has made him lose his eye, he shall pay money, half his price.

[1] Kohler, *Zeitschrift für vergl. Rechtswissenschaft*, 1897, pp. 406, 407; Alvord in *Schoolcraft*, v. 653; Morgan, *League of the Iroquois*, 331, 332. (Failing a present of a belt of white wampum the family of the deceased appointed an avenger.)

[2] Waitz, v. p. i. 143. The wergild varies from 200 to 1000 gulden, according to the rank of the dead man. In case of poison, the poisoner becomes the slave of the family. A paramour may be enslaved by the husband if taken in the act, but if the matter is brought before a court, money compensation must be accepted.

[3] Post, ii. 256, 257. In the lower grades of culture the practice extends, as might be supposed, with the economic development. Comparing Composition with Retaliation, we find the following figures (the expiatory encounters are omitted. The two columns do not represent separate individual cases, composition and retaliation usually being optional alternatives)—

	Retaliation.	*Composition.*
Lower Hunters	44	6
Higher Hunters	50	25
Incipient Agriculture	17	14
Pastoral	9	10
Agriculture	59	43
Higher Pastoral	8	9
Higher Agriculture	43	49

(*Simpler Peoples*, p. 80).

As public justice develops, composition is first enforced. Then it takes the form of the assignment of a fine to the injured party by a court. Then all compounding is suppressed and even becomes criminal. A court may award civil damages for the wrong, but will inflict his due punishment on the offender in addition.

inherent in the nature of the social organization upon which the blood feud rests. For the blood feud is retribution exercised by a family upon a family; it rests upon the support which each individual can count upon from his own immediate relations, possibly from his whole clan; it rests, in a word, upon the solidarity of the kindred. But the effect of this solidarity upon the working of retributive justice is by no means wholly favourable. In the first place, it has the effect that the lives of members of other clans are held indifferent. A perfect illustration is afforded by the Angami Nagas, a tribe of the north-east frontier of India who live in villages composed of two or more "khels," as their clans are called, which, though living side by side and intermarrying, are for purposes of defence independent communities. A hostile tribe may descend upon the village and massacre all the members of one "khel" while the other "khels" sleep peacefully in their beds and do not raise hand or foot to protect their neighbours. This is cold-blooded, but it is not without a certain reason. The exterminated "khel" has incurred a feud from which the others are free. If they rise in its defence they not only incur the danger of the present fight, but they also involve themselves in the permanent feud.[1] Next, in so far as justice rests on the blood feud, and the blood feud is of the nature of a private war between distinct families or clans, it follows that offences within the clan are a matter for the clan only and not for society as a whole. As a rule we hear little about them, partly because, no doubt, they are rarer,[2] but mainly because they do not excite a feud and do not, therefore, affect the social order as a whole. But that they stand in quite a different category from offences by an outsider upon a fellow clansman is clear from many instances. In some the offender may escape very lightly. Thus, among the Iroquois and Delaware, the kin would exact a fine, and failing a fine, blood-vengeance from a murderer, but if a man murdered one of his own relations, he escaped without much difficulty, for the family, who alone have the right to take revenge, do not choose to deprive their race of two members at once. They rather endeavour to bring about a reconciliation and even justify the deed.[3] On the other hand, among the Thlinkeets, while murder by a non-clansman is a matter for vengeance or composition, a disgraceful act would be felt so keenly by the man's own family, that he might be degraded or killed for it. Here, then, is something like impartial justice within the kindred, but not beyond it.[1] In some cases the kindred may intervene to protect themselves. Thus, among the Topanaz, if a man has killed a tribesman, accidentally or not, his kinsmen take him to those of the slain man, who strangle him. The two parties then eat together and the affair is settled. The motive is explained by the fact that if the murderer flies, one of his near kindred must atone for him.[2] The *patria potestas* is, of course, the most widely spread case of unrestrained power within a circle of kindred.[3]

---

[1] Godden, *J. A. I.*, xxvi. 167. Similarly in contemporary Africa, so far as blood revenge holds, the slaying of any one outside the clan is no more regarded as wrong than the killing of an enemy in battle among us (Post, *Afrikanische Jurisprudenz*, i. 60).

[2] No Omaha ever slew his "affinity," says Dorsey (*Omaha Sociology*, p. 369).

[3] Loskiel, p. 21.

Apart from more direct punishment, the kindred or their head have the effective weapon of expulsion. This is the more serious, because when there is no other protection than that of his relatives, it leaves a man defenceless. An illustration may be drawn from the early history of Mohammed's teaching, when the Korais, who found that Mohammed's gospel was very inimical to their gains, wanted above all things to put him out of the way and made the most strenuous efforts to induce Mohammed's uncle, who was head of the clan, to disown him. Had the uncle consented, Mohammed would have been left without protection and might have been dispatched by any one without fear of consequences, but till the death of the uncle the clan stood by him; and the leading men of Mecca, powerful as they were, were not bold enough to take upon themselves a blood feud with Mohammed's family.[1] The fear of the blood feud is the great restraint upon disorder in primitive society, and, conversely, he whose death will excite no blood feud has no legal protection.

---

[1] Swanton, p. 427.

[2] Eschwege, vol. i. p. 221. Compare the action of the family among the Creeks (Bartram, *Trs. American Ethnol. Socy.*, 1853, pp. 66–67). An interesting case is recorded by Mr. Teit (*Jesup Expedition*, p. 560) among the Shushwap. A man is killed by two of his relations on the ground that "he is conducting himself in such a way that very soon some one will kill him. Then we shall have to avenge his death." They apply the homœopathic remedy publicly and without interference—people remarking that he is a bad man. "His relations wish to kill him, he belongs to them and has nothing to do with us." However, the conscience of the murderers was clearly not easy, for they proceed to challenge every one, and an old woman gets up and says, "You are not content with killing your relation but also boast and challenge us," whereupon the murderers fled.

[3] But it must be noted, conversely, that the murder of a parent might excite general horror and even punishment at the hands of unconnected people. Thus, among the Campas, who had no regular government or law, Urquhart says: "It must not be supposed that crime is on this account allowed to go unpunished," and he mentions the case of a man who had murdered his mother and fled—"At every hamlet the same indignation was expressed. Not an Indian but would kill him on sight" (*Scottish Geogr. Magazine*, 1893, p. 349). A similar sentiment is hinted at with regard to a man who gambled away wife and children among the Carriers, but the authenticity is doubtful (Morice, *Trs. Canadian Institute*, 1893, p. 79).

So far the negative side of clan justice. The positive side has peculiarities not less startling to the modern mind, for since it is a member of one body who has done a wrong to a member of another body, the whole body to which the offending member belongs may be held responsible by the whole body to which the injured member belongs; and it is not merely the original criminal who may be punished, but logically any member of his family may serve as a substitute. Responsibility is collective, and therefore also vicarious. Sometimes the whole family of the offender is destroyed with him.[2] Sometimes any relation of the offender may suffer for him vicariously. John, who has done the deed, being out of reach, primitive vengeance is quite satisfied with the life of Thomas, his son, or brother, or cousin. Just as in the blindness of warfare the treacherous act of an enemy is generalized and perhaps avenged in the next battle by a retaliation which does not stay to ask whether it is falling on the innocent or the guilty, so in the primitive blood feud. The wrong done is the act of the family or clan to which the aggressor belongs, and may be avenged on any member of that family or clan.[1] Sometimes the retaliation is made more specific by a fresh application of the *Lex Talionis*, and to the rule "eye for eye," there is the pendant "son for son, daughter for daughter, slave for slave, ox for ox." You have slain my son? Then the true and just retribution is that I should slay yours.[2] It is my daughter who is slain? Then it is with your daughter that you must pay for her. Sometimes vengeance is specially directed against the chief as representing the clan.[3] Sometimes it may be visited on any male, or even on any adult member of the clan, children alone being excluded. Sometimes this last shred of humanity is torn away. The principle is pushed to its furthest and most revolting development among the head-hunting tribes common in South-East Asia, in which magical ideas combine with those of revenge, and the skull of the enemy has a potency of its own which makes its possession desirable in itself. The head of a child or woman of the hostile body is no less coveted an object than that of the fighting warrior, and is probably easier to obtain. When the principle of composition arises collective responsibility is reduced, by a less barbarous logic, to a common pecuniary liability. The clan are collectively responsible for the blood money due from a member, and by the same logic they are the collective recipients of blood money due to any member.[1] And as with blood money so with other debts.[2] There is a collective liability—a conception which in this softened form has its uses in the social order, and is in fact enforced and applied to the commune—though in right it belongs rather to the clan—by many Oriental Governments.[3]

---

[1] Palmer, *Introduction to the Koran*, pp. 24, 25. Among African peoples there is, generally speaking, no blood feud for homicide within the clan. But among the South-Western Arabs the parricide is put to death, and for fratricide the father may put the offender to death or demand the blood price (Post, *A. J.*, i. 63). Among the Bogos the slayer of brother or father would be killed on the spot if taken. But if he escapes, his fate will depend on the question whether his victim has or has not left children. If so, they will take up the feud. If not, he can make his peace without payment, and then inherit his brother's property and widow (*ib.*, ii. 60). In the Malay region the murder of a relative is dishonouring, but has no money penalty (Waitz, v. 1, 149). For illustrations of the variety of customs under this head, see Steinmetz, ii. 153–176. Ostracism, culminating in outlawry, is perhaps the only punishment known to the Seri Indians. The victim might be left to perish unless reinstated by a display of prowess or generosity (McGee, *R. B. E.*, xvii. 273). Expulsion from the clan was the only punishment among the Santals, but other clans would not take the outcast in, so that his position was hopeless. Minor offences might be compounded by giving a feast (Hunter, *Indian Empire*, p. 73, and *Rural Bengal*, p. 205).

[2] *e. g.* among the Kaffirs, at Loango, and among the Barolong, the relatives are held responsible for payment by the accusers, and on the Gold Coast the relatives of the sorcerer are slain or enslaved along with him (Post, *A. J.*, i. 46). Among some North American Indians the family and the whole tribe were held responsible for a murder committed by one of them (Waitz, iii. 132). In Anglo-Saxon law it was possible for a family to be enslaved for a theft by the father (Pollock and Maitland, i. 56).

---

[1] For instances, see Post, *Grundriss*, i. 230 ff. Prof. Tylor instances the Bedouin, Australians, South Sea Islanders, and Kaffirs, as peoples among whom the blood feud involved the whole clan (*Contemp. Review*, 1873, p. 59). In some cases the wergild involved the slaying of several persons for one. Thus, by Anglo-Saxon law, six ceorls must die for one thegn (Pollock and Maitland, ii. 450). Edmund set himself to suppress feuds, forbidding attacks on the kindred unless they harbour the homicide. Mohammedan law, while admitting retaliation, restricts it to the offender (Post, *loc. cit.*). But the kin are liable for money composition (Dareste, p. 64). In many African tribes a creditor will seize and sell as a slave any relation of the debtor's whom he can find, or even any member of the same town. It is not surprising to learn that this method of distraint is a fruitful source of war (Post, *A. J.*, ii. 140). A still wilder development of vicarious revenge is found in the Gazelle Peninsula among the Papuas, where the husband whose wife has been stolen goes into the bush and kills the first man he meets. This man's kindred do the same thing, and the process is repeated till the stroke lights upon the original offender, whose goods have to pay all the damage (Kohler, *Z. d. vgl. Rechtsw.*, 1900, p 381). Cf. a similar practice in S. Guinea (Post, *A. J.*, ii. 22).

[2] The most astonishing case is in the treatment of the builder in the codes of Hammurabi, 229: "If a builder has built a house for a man and has not made strong his work, and the house he built has fallen, and he has caused the death of the owner of the house, that builder shall be put to death.

230. If he has caused the son of the owner of the house to die, one shall put to death the son of that builder.

231. If he has caused the slave of the owner of the house to die, he shall give slave for slave to the owner of the house." Though barbaric, these sections might have a use if suitably posted in modern suburbs.

[3] Or the father or elder brother may be the appropriate victim. Among the Dieri, if a man killed another unintentionally in a fight, his elder brother or father will be slain some night by a Pinya or secretly formed party of avengers. He himself will only suffer if he have no such relative (Gason, in Brough Smyth, vol. i. p. 129). In West Victoria a man's brother or nearest male relative was responsible for the appearance of a man summoned to stand the spear-throwing ordeal, and if he fails to appear, may be attacked with boomerangs (Dawson, *Australian Aborigines*, p. 76). Collins (*History of N. S. Wales*, p. 321) relates a complicated vendetta, a minor incident in which is that a widow revenges herself on her husband's murderer by killing a little girl related to him and is not molested, but afterwards lives with the murderer until he is killed by one of her deceased husband's friends.

6. Further, with the theory of collective responsibility goes almost necessarily the failure to distinguish between accident and design. In the ethics of organized vengeance the real gravamen of a charge against an aggressor is that he has done an injury. How he did the injury, whether of set purpose or by accident, is a matter of less moment. My son, or brother, or cousin, or clansman, is killed; that is enough for me; I must have some satisfaction out of the man who did it, and, what is

---

[1] *e. g.* among the Bogos and Bedouin (Post, i. 253), and compare Post, *A. J.*, i. 45 and ii. 35. For collective claims on the blood money, cf. Tacitus, Germania (*ap.* G. Waitz, *Deutsche Verfassungsgeschichte*, i. 32), "recipitque satisfactionem universa domus."

[2] *e. g.* at Great Bassam (Post, *A. J.*, i. 45). Among the Yoruba, Tshi, and Ewe speaking peoples, collective responsibility which formerly applied generally is now restricted to debts (Ellis, *Yoruba-speaking Peoples*, 299). Cf. Waitz, iv. 306. In Yucatan the whole family is responsible for debt.

[3] And elsewhere; *e. g.* at Sierra Leone and in several other parts of Africa, responsibility for debt extends to the Commune (Post, *A. J.*, i. 75). In the Malay constitution the family is responsible for its members, the *suku* (clan) for its families, the village for its *sukus*, the district for its villages (Waitz, v. i. 141). The principles of collective responsibility is found in all economic grades of uncivilized society, but only, so far as our tables go, in a minority of instances (*Simpler Peoples*, p. 80). On the other hand, it is but rarely that we hear specifically that vengeance is limited to the offender. Our table therefore gives a minimum. The principle tends to be extended with the development of composition, for which, very naturally, the whole family is made liable. Thus we find vicarious vengeance mentioned in ·27 of our cases among the Lower Hunters, and in ·17 among the Higher, but in ·38 of the highest Agricultural peoples. In this form, however, it is not so much vicarious vengeance as liability of the family estate for the tort of a member.

more, my family must have some satisfaction out of his family.[1] Furthermore, the whole distinction between design and accident is by no means so clear to primitive man as it is to us, for though it needs little reflection and a very moderate amount of self-knowledge to distinguish between what one has done one's self by accident or by design, and a very moderate degree of reasoning power to apply the distinction to other men—still, the nascent reflection of the savage is strangled at birth by the prevailing theory of witchcraft and possession.[2] If a tree falls upon a man's head the savage holds that a spirit guided it. If a man, cutting a branch from a tree, dropped his axe on to another's head, it may not have been the man's own soul which guided the axe, but it was another soul which possessed him temporarily; he was possessed by some spirit, and as possessed he should be put out of the way.[3] The treatment of the subject in the Hebrew codes illustrates the difficulty which is experienced even at a higher stage in strictly distinguishing between the two spheres of design and accident. Each code assigns a city of refuge for the excusable homicide, but none make it perfectly clear whether it is unintentional or unpremeditated man-slaying that is in view. The Book of the Covenant simply says, "If a man lie not in wait, but God deliver him (the victim) into his hand, then I will appoint thee a place whither he shall flee. And if a man come presumptuously upon his neighbour to slay him with guile, thou shalt take him from mine altar that he may die."[1] In Deuteronomy there is an attempt to define accident. The city of refuge is appointed for "whoso killeth his neighbour unawares and hated him not in times past." The first qualification would be true of unintentional, the second of unpremeditated homicide. Then follows a somewhat elaborate illustration of a case of pure accident.[2] "As when a man goeth into the forest with his neighbour to hew wood, and his hand fetcheth a stroke with the axe to cut down the tree, and the head slippeth from the helve, and lighteth upon his neighbour, that he die, he shall flee unto one of these cities and live:" and then it is once more stated that the slayer ought not to die, "inasmuch as he hated him not in time past," which would be true of any want of premeditation. Furthermore, even in this relatively enlightened code the unintentional slayer is not fully protected. It is clearly anticipated that the "avenger of blood" will pursue him "while his heart is hot, and overtake him because the way is long," and smite him mortally, and there is no hint that the avenger will be punished. Nor was the alternative, exile to the city of refuge, a merely nominal penalty. Finally, in the Priestly Code there is an elaborate attempt to distinguish different cases. The cities of refuge are appointed for every one that "killeth any person unwittingly," or, as the margin renders it, "through error." (An attempt is made to render the meaning clearer by specifying the implements used, of iron, wood or stone.) On the other hand, he who has killed another, "lying in wait" or "in enmity," is to be put to death by the avenger of blood "when he meeteth him." In intermediate cases the congregation shall judge. "But if he thrust him suddenly without enmity, or hurled upon him anything without lying in wait, or with any stone, whereby a man may die, seeing him not, and cast it upon him, so that he died, and he was not his enemy, neither sought his harm: then the congregation shall judge between the smiter and the avenger of blood according to these judgments."[3] Even here, then, the three cases of accident ("seeing him not"), assault without intent to kill ("thrust him suddenly") and unpremeditated homicide ("without lying in wait") seem to be in a measure confused. And even in this code the avenger may slay the man-slayer anywhere outside the borders of the city of refuge until the death of the high priest.

---

[1] Of the union of vicarious revenge and the punishment of unintentional injury, the Hupa supply an instance which has at least the merit of compactness. A woman kindled a fire out of doors to boil water, a child fell into it and was burned, and the life of the woman's son was sought in revenge (Goddard, *Univ. of Calif. Publications*, vol. i. p. 60).

[2] Messrs. Spencer and Gillen (ii. p. 556 ff.) describe an avenging party among the Central Australians setting out to kill a man living a hundred miles away, to whose magical practices they imputed the death of one of their friends. Finally, they failed to find the man and killed his father on the pretext that he knew of the practices and did not prevent them. As the whole charge of magic would probably be founded on nothing better than an antecedent enmity, together with some augury indicating the direction which the avengers should take, the pretext is a sufficiently thin screen for the real idea of vicarious vengeance. Still, it is interesting that it should be put forward. Among the Narrinyeri, Taplin (in Woods, *Native Tribes of S. Australia*, p. 34, etc.) speaks of a distinction between premeditated murder and manslaughter, and describes a combined "tendi," or meeting of two totemic groups, the one accusing a member of the other of murder, while the group of the accused declared that the death was accidental. But he adds: "I cannot give the natives credit for much order. There was a tremendous amount of talk. Sometimes one would speak, then half a dozen would speak together—I could not make out the drift of the discussion." This being so, we can hardly quote this evidence as proof of nice discrimination of degrees of responsibility among the Narrinyeri.

[3] Post, *A. J.*, ii. 29. In West Equatoria the man who injures another in cutting down a tree is held the agent of an indwelling magical power and must submit to the ordeal of Mbundu drinking (*ib.*).

---

[1] Exodus xxi. 13, 41.

[2] Deut. xix. 4–6.

[3] Numbers xxxv. 15, 20, 21, 22–24.

Not infrequently in early law we find the distinction that unintentional homicide is atonable by paying the wergild, while deliberate murder gives rise to the blood feud. Thus in the code of Hammurabi[1] the homicide might swear that the blow was unintentional and escape with a fine. So, again, though Germanic law begins by holding a man equally imputable for all that he has done, it is an ancient mitigation that for unintentional homicide the wer is due, and the blood feud should not be waged.[2] The disentanglement of innocent from culpable homicide was a very gradual achievement in mediæval Europe though aided by the Civil and Canon Law, and the forfeiture of goods—the direct survival of the wergild—remained in theory in English law down to 1828.[3]

It is a natural, though, to our minds, a bizarre consequence that in early justice animals and even inanimate objects may be regarded as appropriate subjects of punishment. The slaying of offending animals is provided for in the Book of Exodus. Many cruel punishments were inflicted upon animals in the code of the Zendavesta,[4] and the same thing occurred in mediæval Europe, where, perhaps under the influence of the Mosaic legislation, it even survived in isolated cases to the sixteenth or seventeenth century.[5] The punishment of animals and inanimate objects was no mere wreaking of blind fury on innocent creatures. Probably, to the primitive mind, the ox that gored a man, the sword that slew, and the murderer that wielded it, were much more on one level than they can be to us. The animal or tool, if not conscious themselves, might be endued with a magic power or possessed with an evil spirit. It was well to get rid of them before they did more harm. If not destroyed they might be purified. Thus in the English law of Doedand, which was not abolished till the middle of the last century, there is a survival of the view that anything that has killed a man must undergo a kind of religious purification; a cart, for instance, which ran over a man, or a tree which fell on him, was confiscated and sold for charity—at bottom merely a somewhat humanized version of the ancient Athenian process whereby the axe that had slain a man was brought to trial, and, if found guilty, solemnly thrown over the boundary. It need hardly be added that where responsibility is extended to animals and inanimate objects, it is apt to be inadequately defined in the case of idiots, lunatics, and minors.[1]

---

[1] Hammurabi, 206–208, cited above, p. 77.

[2] Pollock and Maitland, ii. 470 and 471. In many cases, however, the innocent homicide can only escape by a recommendation to mercy. In the Anglo-Saxon law the distinction is not so much between intentional and unintentional as between open and secret slaying (*ib.*, i. 52). This recalls the difficulties in Deut. and Numbers. Generally speaking, according to Post (*A. J.*, ii. 28), the responsibility of the agent is not presumed as a ground of his punishment in Africa. But in some cases, as in Aquapin and Ashanti, the penalty for an accidental offence is reduced, and later (in contradistinction to earlier), Kaffir law imposes, as a rule, no penalty on accidental homicide.

[3] Blackstone, iv. 188. In practice "as far back as our records reach," the defendant could obtain a pardon and writ of restitution. The clear demarcation of individual responsibility is far from being universal in civilized law. In the Mohammedan world, a man's family is collectively responsible even for damage done by him involuntarily (Post, *Grundriss*, ii. 216, cf. Dareste, p. 64). In China, involuntary offences are punished, though on a reduced scale. In the Japanese code of 1871 accidental injury to parents is heavily punished (Post, ii. 218).

[4] Entirely, no doubt, under the influence of magical ideas.

[5] For other instances, see Post, ii. 231.

The principle of collective responsibility does not necessarily disappear with the rise of public justice under central authority. It lingers on, partly through sheer conservatism, but also in many cases for political reasons, to a late date. Thus it is particularly common to find that in political offences the family of the offender suffers with him. The principle of collective responsibility has always been maintained in the Far East, in China,[2] in the Korea, and, under the influence of Chinese civilization, in Japan, while it is noteworthy that for political offences the parents and children might be punished under French law right down to the time of the Revolution. Parallels could be found in the laws of the ancient East, of ancient Persia,[3] and of many states of mediæval Europe. It is, in fact, only the decay of the joint family system and the rise of the free individual as the basis of the modern state which definitely does away with this principle, so fundamentally irreconcilable with the strictly ethical notion of justice. An interesting transitional phase is to be found in the Old Testament, where the visiting of the sins of the fathers upon the children is very definitely laid down as a piece of divine justice in the earlier legislation (I mean in the second Commandment), whereas in the time of Ezekiel it was strongly maintained to be an injustice that when the fathers had eaten sour grapes the children's teeth should be set on edge. It was, in fact, part of the ethical revolution introduced by the later prophets to establish morally for the Jewish code the principle of individual responsibility.[1]

---

[1] See Post, ii. 219, and, for the variation of custom under this head, Westermarck, *Moral Ideas*, pp. 265–277.

[2] Post, ii. 226. With this is associated punishment for unintentional offences (*ib.*, 217). In Chinese law, accidental parricide is still capital, though the older law appears to have been mitigated. A man who accidentally killed his mother in attempting to defend her, was sentenced to the lingering death, commuted by special decree to decapitation, subject to the Empress's pleasure. See, for various instances, Alabaster, p. 159 ff. A wife killing her husband unintentionally is sentenced to decapitation (*ib.*, 192). A misdeed which, however indirectly, caused the death of a senior relation is also punished, if the relative be a parent, by death (*ib.*, 320 *seq.*). A senior relative is punishable for a junior's offence, even if he knows nothing of it; *e. g.* a father was sentenced to one hundred blows because (unknown to him) his son had abducted a girl (Alabaster, p. 152). A junior relative is still more heavily punishable for the offence of a senior. If a man murders four members of one family he suffers the lingering process, and his male children, irrespective of age, die with him in equal number to those murdered. In the case of Wang Chih-pin a child of ten was condemned to death for murders by his father. In another instance, the children were condemned to be castrated, the father having killed three persons (*ib.*, 164). The motive is partly to punish the murderer's spirit by cutting off his male descendants, on whose offerings he depends in the new life (*ib.*, 58).

[3] Post, ii. 227.

7. With the evolution of social order, and in particular with the growth of central authority, the redress of wrongs begins to take the form of an independent and impartial administration of justice. Let us trace this growth in outline from its beginnings In order to do so we have to follow several strands of development, which are gradually woven together.

(a) *Sacral and other Public Offences.*—In the first place, from a very low stage of social development we find the community as a whole, or its organs the council of elders or the chief, dealing regularly with certain actions which are resented as involving the community as a whole in misfortune and danger. These include, besides actual treason, conduct which brings upon the people the wrath of God, or of certain spirits, or which violates some mighty and mysterious taboo. The actions most frequently regarded in this light are certain breaches of the marriage laws and witchcraft.[2] The breaches of the marriage law which come in question here are confined to those transgressions of the prohibitions of intermarriage upon which primitive races lay such extraordinary stress. A mere violation of the marriage tie is generally in savage society a private matter, avenged by the husband alone, or by those whose duty it is to help him; but a breach of the rules of exogamy, a marriage within the totem, for example, or a marriage outside the permissible class, is regarded as an offence endangering the community herself, and only to be wiped out by the extinction of the offender. A Central Australian tribe, for instance, which has no regular means of enforcing any law, will make up a war party to spear the man and woman who have married in defiance of these customs.[1] Similarly, common action will often be taken to protect the community from witchcraft, obviously a terrible offence in a society which firmly believes in it. Among the North American Indians a public sentence was often pronounced and carried out by the chiefs in cases of sorcery, and sometimes also in cases of cowardice or breaches of the marriage customs.[2] The punishment of witchcraft is as widespread as the fear of it, and, prompted as it is by the sense of a danger to the whole community, is often peculiarly ferocious, and directed to the destruction of every one connected with the offender.[3]

---

[1] Ezek. xviii. 2; Jer. xxxi. 29. The result is embodied in Deut. xxiv. 16: "The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers: every man shall be put to death for his own sin." The same transition is found in the law of the Visigoths: "Let not father for son, nor son for father, nor brother for brother fear any accusation, but he alone shall be indicted as culpable who shall have committed the fault" (Sutherland, *Origin and Growth of the Moral Instinct*, ii. 168). By Salic law a man might cut himself off from his family, but then, of course, he also lost its protection (*ib.*, 167). In the Gilgamesh Epic we have an interesting appeal to the god to visit his offence on the sinner and not destroy mankind.

[2] Cf. Steinmetz, *Ethnologische Studien zur ersten Entwickelung der Strafe*, ii. 328–341. Among the Hurons in the seventeenth century murder and theft were punished by retaliation, but for a sorcerer death was authorized by the people, and the first comer might slay him (Le Jeune, writing in the *Jesuit Relations*, A.D. 1636, vol. x. p. 223). As to traitors, there is some conflict of evidence, Lalemand (vol. xxviii. p. 49) speaking of no

---

punishment but compensation, while elsewhere we hear of the traitor's liability to be executed by the first comer. Magic murders and breaches of the tribal marriage rules are more than once mentioned by Messrs. Spencer and Gillen as illustrations of the offences which a council of the elders would punish. It is not distinctly stated, but one would infer that these are the regular occasions for such action, though they may at times deal with other matters. Among the Dieri, on the other hand, real as well as magic murder seems to have been punished by the council (Howitt, p. 321), though whether the council really represents the tribe as a whole, or a group or association of groups combining against an outsider, is not quite clear to me. From the fact that its vengeance may be vicarious (see above, p. 82) I should infer the second alternative.

[1] Sometimes the old men of the tribe will invite a neighbouring group to execute the criminal. Cutting and burning are sometimes substitutes for death (Spencer and Gillen, *Native Tribes of Central Australia*, p. 495).

[2] Kohler, *Zeitschrift für vergleichende Rechtswissenschaft*, 1897, pp. 412–416. For the punishment of sorcery, see Waitz, iii. 128. Among the Salish, Kwakiutl, Nootka, Tsimshian, Thlinkeet, and Haida peoples Niblack (*R. B. E.*, 1888, p. 253) says: "In cases such as witchcraft or offences of medicine men, sentence of death or of fine is adjudged by the leading men of the village after trial. In most instances, however, the law of blood revenge, an eye for an eye, leaves little need for other than family councils, as they are purely totemic offences and are arranged by the injured gens."

[3] "The punishments affecting sorcerers can scarcely be called punishments. They are acts of annihilation."—Post, ii. p. 395, where numerous instances are given from all parts of the world. In some cases, the whole family of the offender perishes with him.

In the same spirit any offences against religion or even breaches of ceremonial rules may be made matter for public punishment. Thus, among the Bellacoola Salish, the assembled chiefs would decree death for any transgression of the Kusuit ceremony, as by the unlicensed performance of a dance or making a mistake in dancing.[1] So, too, among the Tsimshian the Council punishes sorcery and breaches of the prescribed dancing rules.[2] Sometimes insanity or some eccentric habit may have serious consequences. Thus, among the Chepara, "if a man became insane or was in the habit of idiotically muttering to himself, they killed him because they thought that it was *Wulle* (an evil being) that was influencing him, and that disaster might happen to the camp. In the same tribe to show the Bull-roarer to a woman was a capital offence for both parties.[3]

The object of the community in exterminating the offender in these cases is not so much to punish the wicked man as to protect itself from a danger or purge itself from a curse. Achan takes the accursed thing, the thing which had been devoted to Jahveh. The taboo on the thing devoted is at once communicated to Achan himself as though it were a poison or an infection, or, to take another metaphor, a charge of electricity. It passes from the spoil appropriated to the appropriator, and no resource remains but to devote Achan with all his family and belongings, everything, in fact, which the accursed thing had infected. The Roman criminal, if his offence bore a religious character, was "sacer"—separated from men, made over to the offended deities.[4] His goods were set apart (*consecratio bonorum*), for they were involved in his impurity. He was banished, so that none might come into contact with his accursed person. He was cut off from fire and water, not primarily because fire and water were necessary to his life, so that he was sentenced to death by being deprived of them, but rather for fear that his accursed touch should pollute the sacred elements and convey the pollution to others. That the criminal suffered in consequence was a satisfactory collateral effect, but the main thing was to secure the fire and water from pollution.[1]

---

[1] Boas, *Brit. Ass. Reports*, 1891, p. 417.

[2] Boas, *Brit. Ass. Reports*, 1899, p. 832. By a curious turn of thought, both the vicarious principle and that of atonement may figure even in such cases as these. Thus, in the Bellacoola case, a relative may, if willing, be substituted for the offender (Boas, *loc. cit.*). Among the Tsimshian any crime may be atoned by sufficient payment (*loc. cit.*). Similarly among the Euahlayi, in Australia, taking a woman of the prohibited class was a deadly sin. "But by a curious train of reasoning two wrongs make a right," for such a man might stand the spear-throwing ordeal from the woman's kin, provide a woman of his family for a man of hers (exactly the same breach of rules which he had himself committed), and then live with her in peace (Mrs. K. L. Parker, p. 79).

[3] Howitt, p. 354.

[4] Thus the undutiful son is "sacred" to the parental deities. "Si parentem puer verberit, ast olle plorassit, puer divis parentum sacer esto" (Bruns, *Fontes Juris Romani Antiqui*, p. 14). Treason to a client, or ploughing up a neighbour's landmark would also render a man "sacer" (cf. the curses in Deut. xxvii.). At bottom, the idea of some North American Indians is similar, among whom the murderer is taboo, because haunted by the ghost of the victim (Kohler, *Z. f. vgl. Rechtswst.*, 1897, 408).

Thus far, then, public punishments, where they are any more than an explosion of indignant feeling, may be regarded as public action taken for the sake of public safety. The community is threatened with palpable treason, or with occult magic influence, or by the wrath of the gods.[2] It protects itself by destroying the traitor, or sacrificing, or, at any rate, getting rid of, the witch. It is a kind of public hygiene rather than a dispensation of justice which is in question.[3]

In other cases the tribal offence is of a more secular character. Intercourse with an alien was held the deadliest offence among the Seri,[4] and was among the misdeeds that led to outlawry, and among the Makh-el-Chel of California the chief might put a woman to death either for marriage or adultery with a white man.[5] A chief himself was lynched among the Ni-shi-nan for kidnapping women to sell to the Spaniards.[6] These are offences verging on treason.[7] To them may be added, as essentially public matters, breaches of camp discipline and violations of the rules of the hunt. Thus, among the Kiowa Indians, "Camp and ceremonial regulations were enforced and their violation punished by the ya'pahe (warriors) acting under direction of the war chiefs. Personal grievances were avenged by the injured party or by his nearest relatives without interference by the tribe."[1]

---

[1] Ihering, *Geist des Römischen Rechts*, i. 275–277, etc.

[2] Among the German tribes the worst offenders were sacrificed to the gods, unless the latter showed signs of grace, in which case the offender became a slave of the gods, or was sold into slavery, or became an exile. The great offences were : breach of the peace of the temple, the army, or the meeting, of a special festival, or, finally, of the house; grave-robbing, treason, raising an army in rebellion, arson, black magic; anti-social crimes of peculiar depravity, such as breach of a sworn peace, unnatural desire, and acts of cowardice, such as desertion from the army; concealed murder and theft, in opposition to open murder and robbery (Schröder, *Lehrbuch der Deutschen Rechtsgeschichte*, pp. 74 and 76).

[3] Among the Central Sakai marriage within the family (including that of first cousins) is looked on with abhorrence. "Incest of this sort (for it does occur) is one of the few things that can stir an aboriginal community to its depths. It seems to invite the divine wrath, and no Sakai feels safe till the scoundrel is put an end to. And as the Sakai political system has no means of compulsion or punishment for dealing with cases of this sort, the tension becomes greater than ever" (R. J. Wilkinson, *Papers on Malay Subjects*, "The Aboriginal Tribes," p. 50).

[4] McGee, *op. cit.*, p. 284. [5] Powers, p. 214. [6] Powers, p. 320.

[7] Mere friendship with white men may be dangerous—a man was killed for this by the Dieri (Howitt, p. 332).

(b) "*Occasional*" *Justice.*—In several of the above cases it is clear that it is not for lack of an organ of punishment that private matters are left to party vengeance. It is that they are not regarded as matters directly concerning the community as a whole, and the evolution of criminal justice may be looked at from one point of view as an extension of the conception of a "tribal" offence till it covers every serious wrong done to a single member of the tribe. We find a beginning in this direction when special offences that provoke indignation are met by a special act of collective resentment. This may be due to the unpopularity of the aggressor or to the status, influence, or popularity of his victim. Thus, of the Shoshones, Bancroft writes: "Every man does as he likes. Private revenge, of course, occasionally overtakes the murderer, or, if the sympathies of the tribe be with the murdered man, he may possibly be publicly executed, but there are no fixed laws for such cases."[2] This is typical of what we may call "occasional" public intervention in private matters. It is neither law nor justice, which go by rule, but an explosion of popular sympathy which may or may not be provoked by the personalities involved in the case. The objections to the offender may, indeed, be well founded. Thus, among the Central Eskimo, a man who had committed repeated murders might be killed with the consent of all his neighbours, and in Labrador we are told that a murderer who turned on the avenger of blood and killed him, might be put to death.[3] So among the Dakota we hear of the village council decreeing the death of some young men who had attempted the murder of their brother and threatened that of other people. The proceedings were held while they were asleep, and three men, one a half-brother, were delegated to dispatch them.[4]

(c) *The Adjustment of Disputes.*—It is easily intelligible that occasional intervention should harden and define itself into rules of custom. But there is another method of approach to regular justice which has, perhaps, had greater influence. It is the natural effort of friends, relatives and neighbours to prevent the development of a quarrel into a fight, particularly when the fight may involve ultimately all the consequences of a party feud. It is equally natural that the older men, or the chief, who is often no more than the most respected and influential elder of a little group, should be particularly active in this respect. Thus we often hear of a chief little that is definite except that he takes the lead in the movements of the band, having, perhaps, no authority but that which respect and his personal prowess or powers of persuasion may lend him, and that he settles disputes among his followers. Where his power is so purely personal, the submission to his judgment must be voluntary, and we must think of him not as a judge, but as a friendly arbitrator, or rather, at first, as a conciliator. If the parties are not satisfied, self-redress remains. Thus, among the Montagnais, Micmacs (or Souriquois) and Etechemins, the Jesuits found small chiefs or "sagamores" who, with the help of the friends, easily adjusted small quarrels. But these chiefs had no binding authority, and all serious crimes were occasions for vengeance or composition.[1] Resort to the chief may be wholly optional. Among the Timorese the leorei is judge as well as king, but acts only in the rare cases when complaint is made to him. Every man or his family exacts justice on the wrongdoer, if possible by extorting compensation.[2]

---

[1] Mooney, *R. B. E.*, xvii. 233. Cf. Dorsey on the Hidatsa, *R. B. E.*, xv. 243.

[2] Bancroft, p. 435. For the *Lex Talionis* among the Utah Shoshones, cf. Remy and Brenchley, *Journey to Great Salt Lake City*, ii. 292, where the actual instances given refer to the whites, but the practice is taken as general.

[3] Boas, *R. B. E.*, 1884–1885, p. 582 and appendix. Turner, *R. B. E.*, xi. 586.

[4] Schoolcraft, vol. ii. p. 183.

In many cases where a settlement of disputes by a council of elders, or a chief, is spoken of, we find on further examination that this method is merely subsidiary to that of self-help and private vengeance. Thus, among the Nagas, Stewart[3] certainly tells us that petty disputes and disagreements about property are settled by a council of elders, the litigants voluntarily submitting to their arbitration. But he goes on to say that, correctly speaking, there is not a shadow of constituted authority. It is true there is general peace. But this is founded on revenge, and the prosecution of it to the extremest lengths for the most trifling offences—and this not only as between different villages, but as between two members of the same village. In the rare event of a quarrel breaking out between two men of the same village, each has his party who "takes up his quarrel not by any means from a sense of justice, but from relationship—and a civil war ensues which is disgusting to contemplate." In such cases as this it would be very misleading to speak of justice as administered by a court as we conceive it. The function of the council is clearly to maintain the peace if possible, but the real basis of order is the blood feud and the fear of it.

---

[1] Biard, in the *Jesuit Relations*, vol. ii. p. 73; vol. iii. p. 93.

[2] H. O. Forbes, *J. A. I.*, xiii. p. 421. As the Portuguese forbid the taking of life, we are told that now cases are brought before the Rajah in order to secure the fines.

[3] *Journal As. Soc. of Bengal*, p. 609.

"The justice" of a chief is often of the same subsidiary kind; thus, among the Brazilians, von Martius[1] tells us that the chief hears the rare cases of dispute, associating with himself the sorcerer and medicine-man; that in grave cases whole families with their supporters come before him, that he tracks a thief and enforces restitution, and perhaps the punishment of wounding in addition (p. 81). But looking further, we find that in these tribes blood revenge is in full swing. There is no punishment for killing a man in a quarrel. Revenge is purely an affair of the family. It is only when death or injury is inflicted by a member of another tribe that the community takes the matter up. Vengeance is collective and spares neither children nor the aged. Where, then, is the chief in all this? He seldom meddled, we are told, in cases of homicide within the community, but there was no rule in the matter. He might seek to appease the feud by getting the parties to accept composition, but probably this would only be accepted in the case of somewhat distant relatives (pp. 130, 131). Smaller quarrels were generally fought out, and it was thought discreditable to bring them to the chief. In this case, then, the public authority as focussed in the chief is seen acting intermittently for the appeasement of strife by the well-known expedient of "composition." But in the background, as before, lies the blood feud.[2]

In particular, a chief or a council set themselves to secure the acceptance of composition. Thus, among the Khonds, we read that Retaliation is in general the sole remedy for wrongs of whatever order, but society intervenes to prevent revenge by composition, having in view "exclusively the private satisfaction of the individual, not the vindication of any civil or moral rules of right." Some very simple peoples have a complete system of arbitration, resort to which is altogether optional. Thus, an aggrieved Hupa might take his case to his headman or some other prominent person, who would suggest compensation. If the facts were disputed, witnesses would be heard and the "court" would duly receive a fee. Personal injuries and homicide might be settled in this way, but it was equally open to the complainant to reject any settlement and demand life for life, vicariously or otherwise.[1]

---

[1] *Beiträge zür Ethnographie Amerika's*, i. 59, etc.

[2] McPherson, *Memorials of Service in India*, p. 81. Among the Kayans we get a transition to public justice. The authority of the chiefs and the penalties imposed by them "are prescribed in a general way by custom," but much depends on the personal qualities of each chief, and, "on the whole, the chief plays the part of arbitrator and mediator, awarding compensation to the injured party, rather than that of a judge" (Hose and McDougall, *Pagan Tribes of Borneo*, i. 65). Among the Sea Dyaks it would seem that the chief ought to execute justice, but "ties of relationship are impediments" (Ling Roth, *Natives of Sarawak*, ii. 228).

(d) *Regulated Vengeance and Partial Control.*—A common modification of crude self-redress is the set fight. This may be a mild affair, like the boxing matches by which the Western Eskimo sometimes settle their disputes.[2] Others are more deadly, as among the Yuracare, where, though a wound in the arm should end the fight, the duel, in fact, often proceeds to the death.[3] The duel generally takes place under prescribed conditions and may be terminated by a set test, as among the Kubu, where the abduction of a wife resulted in a duel in the water, the man who could submerge the other winning the woman.[4] It may be a test of endurance, as among the Kabi and Wakka, where the disputants grip one another and scarify the back with a flint till one or other has enough.[5] The public or the chief may look on, and act as judges, as in West Victoria, where the protector of an ill-used wife must challenge the husband to a duel.[6] Here is a germ of public intervention, and the matter becomes still more formal if the fight is between two kindreds or two local groups. Among the Southern Kamilaroi trespass disputes were settled in this fashion, and a single combat of champions might be substituted for a general encounter.[7] The expiatory encounters among the Australians, which have been mentioned above, were not properly fights, for the offender was only allowed to defend himself and not to reply. But his own relatives or his local group were at hand, armed, to defend him, and the precise conditions of the affair seem to have been a matter of negotiation. Thus, at Port Lincoln, Schürmann[8] tells us of two murder cases, in one of which it was agreed that the murderer should stand two spear-throws from the brother of the victim, while the other was settled by a fight between eight men on each side, which was stopped, though with much difficulty, without bloodshed. The first is an expiatory meeting, the second a regulated fight. Both involve a certain amount of supervision, and we might say that, if the community definitely compel the offender to make atonement and would punish him if he refused, this would be a form of public intervention which we might describe as assistance to private revenge, while, if the avenger is similarly compelled to accept such satisfaction and demand no more, it is similarly public control of private revenge.[1] How far public intervention would go, we are not always informed. Often we are told merely that this satisfaction is required by custom, just as in other parts of the world compensation is good custom. But among the Geawegal, Rusden[2] says "obedience to such laws was never refused, but would have been enforced without doubt, if necessary, by the assembled tribe." Curr, on the other hand, says of the Bangerang in a similar case, that if the offender had refused he would probably have been murdered by the injured party, and no one would avenge his death.[3] There would, of course, be the constraint of custom and opinion, but if this account is correct, no physical force other than that of the aggrieved party. A warrior who trusted sufficiently to his own prowess might snap his fingers at the custom,[4] and, indeed, all the accounts show that if he knew how to use his shield, the exposure to the spear-throwing was, at worst, a very nominal risk.[5]

---

[1] Goddard, *Univ. of California Publications*, vol. i. p. 59.

[2] Bancroft, p. 65.

[3] D'Orbigny, *L'Homme Américain*, i. 348.

[4] Hagen, p. 136.

[5] Curr, iii. 121.

[6] Dawson, p. 35.

[7] Howitt, p. 332.

[8] *ap.* Woods, pp. 245, 246.

---

[1] A quite distinctive mitigation of the regulated fight in a peaceably-disposed people is seen in the nith songs of the Greenlanders. A man would challenge any one who had injured him to a contest of song at a meeting of the tribe. "The litigants stood face to face with each other in the midst of a circle of on-lookers, both men and women, and, beating a tambourine or drum, each in turn sang satirical songs about the other. . . . They related all the misdeeds of their opponent and tried in every possible way to make him ridiculous. The one who got the audience to laugh most at his gibes or inventions was the conqueror" (Nansen, *Eskimo Life*, p. 186, etc.). This is not the description of a trial, but of a regulated duel, only a duel of wits, a substitute for the serious blood vengeance which persists, though in a mild form. For murder, we are told, is regarded as a purely private affair for the murdered man's nearest relatives to take up. There are, however, cases of extreme atrocity in which a village has been known to make common cause against a murderer and put him to death, and, as usual, we learn that to kill old witches and wizards is not considered criminal (*ib.*, p. 162). The normal blood feud is varied by occasional outbursts of public resentment.

[2] Cp. Fison and Howitt, *Kamilaroi and Kurnai*, App. F.

[3] *Squatting in Victoria*, p. 245.

[4] See a dramatic story in G. S. Lang, *Aborigines of Australia*, p. 8: "a bold man, formidable with his weapons, could do anything with impunity."

[5] The accused, says Beveridge, of the Riverina natives, generally acknowledged his guilt (which, if we may judge from other cases, would often be a quite imaginary charge of magic), stood the exposure, which was rarely fatal, and was then received again as an innocent man, having "tholed his assize." Perhaps every fifth native, Beveridge thought, had killed his man (*Aborigines of Victoria*, p. 108).

Further, both the regulated fight and the expiatory meeting are in large measure affairs between members of distinct local groups, devised to avoid real and sanguinary battles between them, which would result if either side chose definitely to stand by its own member. Thus, among the Yuin, blood revenge was frequent and led to reprisals, hence the old men preferred the expiatory ordeal. So, among the Wotjobaluk, a murder might be adjusted by an expiatory meeting between the two totems concerned, but if the headmen were not careful to intervene when blood was drawn, the upshot might be a general fight between the two parties.[1] In such a case, doubtless, constraint would, if necessary, be placed on the individual offender by his own group, and on the injured member by his group, but as between the groups the whole transaction would be a party affair. If the offender's group so chose, they might refuse the meeting and risk the fight.[2] At bottom, redress is a question of the strength of the parties.

Thus, whether in the regulated fight or in the expiatory encounter, the basis is self-redress, and public intervention is present only in a germinal form. A further step is taken when the injured man can command the direct assistance of his community, or his chief. Among the Gallinomero, according to Powers, the avenger had his option between the murderer's money or his life, but if he chose his life, it was the chief who tied the criminal to a tree, while a number of people shot arrows into him.[3] What means he used to enlist his chief on his side we do not know. Was there anything like an investigation, or did the affair go by favour and influence?[4] We do not know, but we are clear (*a*) that the initiation and direction of the affair is in private hands, (*b*) that public force is used in execution. This is definite public assistance of private redress. Among the Ojibways we are carried a step further, for the chief in council pronounced upon a charge of murder, but (*a*) it was apparently at the option of the complainants to demand death or compensation, (*b*) it was the next of kin who executed the sentence, and (*c*) many cases never came into court, vengeance being taken directly by the relatives.[5] Again, instead of being assisted, vengeance may be controlled. Thus, among the Pitta Pitta in Queensland, after a fight, the old men of the camp would inquire into the cause. If the conquered man had ravished the victor's wife or given him the "death bone" (a magical process of securing his death) no further action was taken, but if the victor was in the wrong, he must undergo similar injury with similar weapon, even death if death he had dealt.[1] In this case self-redress is controlled. Lastly, we have cases where chief or council direct the affair and inflict the punishment, but this consists in strict talion.[2] Here we may legitimately infer that the public authority has taken over the business of redress, the old method being still applied for the full satisfaction of the avenger's traditional demand. Lastly, the old view of crime may appear in the fact that the most serious offences are atonable, either by compensation which the court awards to the relatives, or by a fine which it takes to itself or puts to public use. Atonement, it should be observed, has a wider application than composition. It rests on the notion that an offence is something that can be made up for by some special sacrifice, a good deed, a benefaction, or a penance, whereas composition is definite payment of damages for injury done to the party injured. In atonement the offender compounds with the community, with God, or with conscience.[3] Unfortunately, we are not always able in our authorities to distinguish between Atonement and Composition proper, for while we are often told that a fine is the penalty, we do not always know to whom the fine goes. But it is sufficiently clear that both atonement in general and composition in particular still play a large part in the public punishment of the simpler societies.[4]

---

[1] Howitt, pp. 334 and 342.

[2] As, *e. g.* among the Wirudjuri (Howitt, p. 332).

[3] Powers, p. 177.

[4] Among the Kurumba, a South Indian tribe or caste, the husband flogs an erring wife and her lover—if he can. If not, he applies to the headman to do it for him. What arguments does he use? (Buchanan, in Thurston, vol. iv. p. 164). Among the Karaya people the business of the chief is to help in finding the offender. It is for the injured party to punish (Ehrenreich, *Beiträge*, p. 29).

[5] P. Jones, *History of the Ojibway Indians*, pp. 108–109.

(e) *The Transition.*—In an ordered society the murder of any simple citizen is regarded with the same feeling and provokes the same collective intervention which would be excited in a simple tribe, where self-redress is the rule, by incest or black magic. We called these tribal offences, and we may formulate the transition from self-redress to regular justice by saying that grave offences against the individual have become "tribal" offences—injuries to the community. Nor is this a wholly imaginary description of the actual method of transition, for in some cases we find evidence that simple homicide has a sacral aspect, and concerns the tribe on this account. Thus, among the Omaha, the murderer might be spared by the relatives, but he was still under a taboo and must pitch his tent apart for two to four years. Even the involuntary man-slayer must do similar penance, though for a shorter time, and the reason was that his presence infected the air.[1] Frequently the homicide has to undergo a ceremonial purification, even though his act was innocent or laudable by the standard of his society. He has the death-infection about him or is haunted, belike, by the ghost of the slain.[2] Among the Dyaks not only incest—almost everywhere a "tribal" offence—but bigamy might be a cause of bad weather and require a purification of the earth with the blood of pigs and a taboo on the village for three days.[3] The shock to the customs and sentiment that regulates private intercourse clothes itself in the familiar supernatural garb. Condemnation of the act takes the form of a fear for the commonweal, which naturally reinforces the resolution to put down such acts by the punishment and, if need be, extermination of the offenders.

---

[1] W. E. Roth, p. 140.

[2] *e. g.* The Jakun, P. Favre, *Indian Archip.*, vol. ii. p. 268. Cf. the Atkoor Chensu, among whom the death penalty was inflicted by the chiefs of clans in the same manner and with the same weapon as the murder (Captain Newbold, *J. R. A. S.*, vol. viii. p. 275).

[3] Among the Padam Abors, crime was a public disgrace, to be expiated by a sacrifice, for which purpose the people took the first animal they found, leaving the owner to recover compensation as best he could from the offender (Dalton, p. 22).

[4] Confining the title of composition to cases in which it seemed clear that the injured party is paid, and leaving all other cases of payment for murder, rape, etc., under the head Atonable, we enumerated 152 cases of composition and twenty-four of Atonement (expiatory encounters not reckoned). The majority of these would be associated with private redress. We have found at various stages thirty-four cases of composition or atonement associated with regular Public Justice.

But, apart from sacral conceptions, the developing sense of justice, the natural sympathy with the injured man, and the dislike and fear of the aggressor, have an important ally in the necessities of the common safety. Self-redress is a dangerous proceeding, as the result of which a little community may at any time find itself divided into two bitterly hostile factions. In the small Australian local groups, or in a Californian band, there will hardly be any one who is not connected with one or other of two disputants, and a quarrel will endanger the whole society. Hence even in the lowest societies we are not to suppose that serious aggressions are matter of entire indifference to the bystanders.

---

[1] Dorsey, "Omaha Sociology," *R. B. E.*, 1881, p. 369. Fletcher and La Flesche, *R. B. E.*, vol. xxvii. p. 215.

[2] Some cases, at least, of the Australian expiatory meetings are referable to this cause, *e. g.* among the Ngurla, people who have been absent when a relative dies, must not speak on return to camp till they have had spears thrown at them (Curr, vol. i. p. 289). So, too, among the Wiimbaio (Howitt, p. 452).

[3] Ling Roth, *Natives of Sarawak*, vol. i. p. 401.

On the contrary, the public opinion of the group is always a force to be reckoned with. Every man's rights and obligations are fixed by custom. The very vengeance taken on those who infringe them is a custom and directed in all its details by tradition. The headman or the elders of the clan or village are prepared to listen to complaints, to decide whether a wrong has been done, and, if so, what the reparation ought to be. The injured party may appeal to them if he pleases, and it may be that the aggressor will abide by their decision. If so, the affair is arranged perhaps by composition, perhaps by a stated penalty. Otherwise the parties will fight it out or it will come to a feud. Hence there is an effort on the part of the leading men to keep the peace and adjust the quarrel. Sometimes they will intervene of themselves if a feud becomes serious and threatens the general peace.

The "court," if so it may be called, appears at this stage rather as peacemaker than judge. The disputants may ignore it, preferring to trust to their own strength and that of their friends. Yet it is from the first the avenger's interest to have public opinion with him. He relies on the countenance and practical help of his kindred and fellow-tribesmen. At least he must avert their opposition. If the facts are peculiarly flagrant the neighbours will be with him and he will have the less difficulty in executing vengeance. Perhaps even the kindred of the wrongdoer will refuse to stand by him. Thus it becomes the interest of the avenger to make his case plain to the neighbours, and they in turn wish to hear what the accused party has to say. A palaver is held. The avenger comes with his kinsmen and friends. They state their case and announce their intention of seeking revenge. The accused is also present, backed by his kin, and repels the demands made on him. It may be that the matter is settled between the groups concerned. It may be that the neighbours or the chief give sentence, but even so it does not follow that they enforce it. They may give the appellant their moral support, and leave it to him to obtain satisfaction as best he can. But, of course, their decision helps him to get the opinion of the tribe on his side, and their moral force will be translatable into physical force. It will mean so many more backers for him, and so many less for his opponents. This support may be disdained by the strong, but it will be valued by the weak, and will be upheld by those who desire internal peace. Feuds are averted by the adjustment of disputes, or, if a wrong has been done, by getting the complainant to accept composition and the aggressor to undergo some penalty which will be a mitigated form of revenge, or by bringing the two parties to fight it out under the regular forms of a duel.

Such methods of mitigating the blood feud are stimulated by the growth of the kingly power—that is to say, of an organized force outside the contending families or clans, which can summon them before its bar, decide their cause, and require them to keep the peace. The king, whose duty and interest it is to maintain public order, treats crime—or certain kinds of crime—no longer as an offence against the individual whom it primarily affects, but as a menace to public tranquillity, a breach of his "peace."[1] This, if he is strong enough, he will punish directly; if not sufficiently strong, he will deprive the offender of his protection, put him outside the king's peace, and compel him by fine to buy back what he has lost. Thus we find crime punishable by wite as well as by bôt—a fine to the king side by side with compensation to the kinsfolk.

But from moral assistance the transition to physical assistance is not very difficult in idea, however slow and cumbrous it may have been in practice. There is more than one method of transition. Sometimes we find the public authority, the elders or the whole body of the neighbours, or later the regular magistrate, exerting themselves to arrest the offender and handing him over to the avenger of blood for execution, or judging between the avenger of blood and the man-slayer, whose act was "unwitting." Thus in Deuteronomy, if the deliberate murderer flies to a city of refuge, "then the elders of his city shall send and fetch him thence, and deliver him into the hand of the avenger of blood that he may die."[2] But without taking an active part in the pursuit and capture of the offender the court had an effective weapon in the power of outlawry. Since in accordance with early ideas all personal rights depend upon membership of a society united for mutual protection, it follows that the man excluded from the group is in the position of a stranger and an enemy; he is a wolf's head, a wild animal whom the first comer may put to death at sight, with whom nobody may associate, to whom nobody may give food or lodging. Outlawry can therefore be applied either as a punishment or as a process—as a method of bringing the accused into court. What more reasonable than that if he will not submit to law he shall lose the protection of the law? With this weapon, potent in proportion as the social order is developed, the court of early law consolidates its authority, and from a board of conciliation of uncertain powers and irregular constitution, becomes an established authority administering public justice, with compulsory powers before which either party can be summoned to appear at the instance of his opponent.

---

[1] Common in Germanic law. See, for England, Pollock and Maitland, ii. 451. The Kaffirs distinguish (1) offences against the king, which consist in infringements upon his property or the number of his subjects. In these they include treason, sorcery, murder, cruelty, rape, and abortion. (2) Offences against private people, which include adultery, immorality, theft, injury to a garden, etc. A similar distinction is found among the Kimbunda (Post, *A. J.*, ii. 54). This is in effect a rudimentary distinction between civil and criminal justice, and shows at least one avenue of transition to the conception of public crime. The notion of injury to an individual is applied to the king, but owing to the king's special relation to the community, the notion, in being applied to him, is unavoidably extended and modified. In fact, potentially it covers all anti-social action.

[2] Deut. xix. 12. So still in the priestly code, Numbers, xxxv. 12–25. The law of the Germanic peoples, in the Frankish period, appears in a transitional stage. The Eastern Goths, Burgundians, Bavarians, and Anglo-Saxons left execution to the complainant. The law of the Western Goths excluded private execution; the Salic law gave the complainant the choice (Schröder, p. 371).

(f) *The Inner Group and the Wider Society.*—When we speak of public justice we have in mind, of course, a community with recognizable limits. But aggressions may be perpetrated by members of another community and there may then be no common court of appeal. In a circle of civilized communities all private offences would come under the jurisdiction of one community or the other. If an Englishman should be robbed in France, he would seek satisfaction in the French courts. It is only the class of grave public differences for which civilization has not yet succeeded in establishing a public justice which should include the community of the world. But in the simpler societies aggression by an outsider may give rise to retaliation on the part of the sufferer or his friends, and the result may be a feud between neighbouring villages or tribes.[1] If the feud is organized by the village as a whole, and led by the chief, we should call it war, but when it is conducted by the injured party on their own account, it is true self-redress and may be called External Retaliation. Now we have seen that in the lowest cultural levels the community is very small, consisting for the most part of near relations, or at any rate of neighbours and friends. Such a community will protect its own members and will present a certain solidarity as against the rest of the world. Yet it may also be on social terms with other similar communities, visiting them, bartering with them, intermarrying with them, perhaps owning certain lands in common, having a common cult and ceremonies, recognizing a common tribal name, and even prepared on occasion to make common cause against outsiders. Something like this is the normal relation of the Australian local group to the tribe, and even, perhaps, to distinct but contiguous tribes.[1] Now public justice may very well be developed within the smaller group, but not beyond it, and this appears, in fact, to have been the case in Australia. Thus, among the Yuin, if a man killed one of his own local group, he was put to death by order of the headmen, but a murder by one of another group gave rise either to vengeance or an expiatory meeting.[2] And among the Boulia people, while vengeance within the group was controlled as we have seen, murder by one of an allied group was revenged by spear-throwing and not always by the exaction of one life alone.[3] These are more like acts of retaliatory justice—mitigated and regulated, no doubt—within a loosely united society than of warfare between two distinct societies. The relations are comparable to those of two or more clans which combine to form one tribe but still retain each the right of protecting and avenging its own members. We have seen above that relations within the clan may be quite different from those between clan and clan. Among the Wyandots, quite an elaborate juridical system was based on this distinction. An offence within the gens was tried and settled by the gentile council. An offence against a member of another gens was a matter for negotiation, and, that failing, retaliation on the gens at fault.[4] Now the clans of a tribe which has a common council or a chief, clearly form one society, and retaliation between them is a case of self-redress within a society. The Australian local groups do not so clearly form a society, and retaliation as between them is not so clearly a case of private justice but might instead be called private war. But this is not because the Australians are more advanced than the Wyandots in general provision for the maintenance of individuals in their rights, but because they are less so, because society, beyond a very small group, is more amorphous and less orderly. To get a fair comparative view of the stages by which justice is established, then, we shall do best by ranging the justice within the Australian local group (though that is not necessarily confined to a kindred) with that of the Wyandot clan, and that of the Australian tribe with that of the Wyandot tribe.

---

[1] Sometimes it seems to be retaliation of this kind which our authorities have in view when they speak of the prevalence of blood revenge. Thus, among the Bagobos, blood revenge is said to be common, but it seems to be practised as between different villages, offences within the village being compoundable (Schadenberg, Z. E., xvii. 28). Among the Igorottes, vengeance was exercised upon members of other villages, but not, we conjecture, within it (see Blumentritt, in Peterman, Ergbd, 1882, p. 287).

---

[1] All the above conditions, for instance, would hold of the groups or, as he calls them, tribes, of the Boulia district, as described by Roth (*op. cit.*, p. 41).

[2] Howitt, pp. 342, 343.

[3] Roth, 140.

[4] Powell, *R. B. E.*, i. p. 66. In the case of murder there seems to have been an appeal to the tribal council, but with what effect is not clear.

It is natural that something of the nature of impartial justice should be found in the small groups that constitute the primitive constituents of society before it extends to larger communities. In the hunting peoples of the Indo-Malay region, where the enlarged family is the society, we hear comparatively little of retaliation and self-help, and sometimes order seems to be enforced and justice done by the elders of the group.[1] So far there is something of an analogy to public justice, but the analogy is only obtained by dropping out the essential differences between a society consisting of a couple of score of near relatives and a people like the Five Nations of the Iroquois, to say nothing of a civilized state. At the level where vengeance is organized, the unit is precisely a family group comparable to and often much greater than the entire community of the forest or jungle peoples, and the evolution of public justice and order is essentially a problem of establishing equitable relations and peaceful co-operation between such bodies, and so constituting a political society. To follow the evolution of justice intelligently, then, we must distinguish the cases where it is established within a constituent group from those in which it holds for a wider society. Public justice, in the full sense, should only be asserted when it prevails in a society which is larger than a family group, and when it holds, not only within but between the constituent groups of such a society.

8. *The Development of Public Justice.*—We have, then, numerous gradations of "public justice," from slight and partial beginnings to a complete system of control over the more important relations of men, and any of these gradations may be found either within an inner group or in an extended society. How far can we trace any actual social development along the line of these gradations? The materials at hand for an answer are (1) recorded history, (2) the indirect evidence of ethnology. To begin with the second, we can apply more than one test. First, we divide forms of justice into three grades. In the lowest we place cases where we have evidence of self-redress, with or without composition or the regulated fight. We add cases where we are told definitely that there is no regular method

---

[1] *e. g.* among the Negritos of Angat.

of redress, though evidence of this kind must be received with a certain amount of caution. We do not eliminate any case from this class on account of "occasional" intervention as explained above, because that stands in strong contrast with regular justice; nor on account of "tribal" offences, because we are considering justice as between man and man, nor, lastly, on account of methods of the peaceful settlement of disputes which do not carry authority. In this grade, then, self-redress predominates. In the next grade we have (1) cases in which the avenger is either assisted or controlled by public force, or can get the judgment of a public court to sanction his act. We add (2) cases in which there is public punishment for some offences, *e. g.* murder, but not for others, *e. g.* rape and theft; and (3) cases, not uncommon, in which there is a fully established system of public justice, but self-redress is still a recognized custom and unpunished. Our third grade consists of cases where a regular system of public justice deals normally with all serious disputes and grave offences. When we compare these three grades with our economic classification, we find (1) a continuous increase in public justice from the Lower Hunters to the Higher Pastoral and Agricultural, (2) in self-redress a corresponding descent from the Higher Hunters to the Highest Agriculture. But the Lower Hunters do not show so high a percentage as the Higher Hunters if we take into account the cases where there is a partial development of public justice within the Australian local group or the Indo-Malayan enlarged family. If, on the other hand, we take account only of justice in the wider society, we have a continuous decline in this grade, corresponding to the continuous rise in public justice.[1]

There is, however, a sense in which the Australians are more advanced than the Higher Hunters, and this is brought out by a slight modification of our grades. This modification is prompted by the difficulty of defining the beginnings of public assistance or control. We felt that in some way or other perhaps every Australian group, and, indeed, every small and compact society, would, if all the facts were known, exhibit some beginnings of such supervision, and we therefore broke up our two first grades into three, the second being intended to exhibit public assistance in germ. We then had four classes altogether: (1) where there was self-redress, or "no law," and public punishments only "occasional" or for tribal offences; (2) where there were regulated or expiatory encounters, or arbitration, or some public punishments, assistance, or control *combined with the independent existence of self-redress;* (3) (*a*) where public assistance or control or public punishments in certain cases are recorded *without any evidence of mere self-redress*, and (*b*) where self-redress remains as an alternative to regular public justice;[1] (4) regular public justice, as before. The result of this classification is to show that the Lower Hunters have a larger proportion in the second grade than in the first,[2] whereas with the Higher Hunters and even the lowest Agriculturist it is the other way. This is the only important irregularity. If we combine the two lower grades as cases in which self-redress predominates, and the two higher as cases in which public justice predominates, we find a close correspondence with the economic grading. The following gives the figures[3] in each economic class, and also reduces them to a fraction of the total number of recorded instances.

---

[1] *Simpler Peoples*, p. 68 ff. The Higher Pastoral show a rather larger fraction than the Higher Agricultural. The Lower Pastoral, on the other hand, are below the Lowest Agricultural.

	Self-redress predominating.	*Public justice predominating.*	*Public justice regular.*
Lower Hunter . .	50½ (·98)	1 (·02)	0 (0)
Higher Hunter[4] . .	59 (·84)	11½ (·16)	4 (·05)
Lower Agriculture .	24 (·72)	9½ (·28)	6 (·18)
Lower Pastoral . .	9½ (·70)	4 (.30)	1 (·07)
Agriculture . . .	57 (·57)	43 (·43)	21½ (·21)
Higher Pastoral .	6 (·39)	9½ (·61)	7½ (·48)
Higher Agriculture .	26 (·29)	64½ (·71)	37½ (·41)

Further, when the classification is applied to each continent severally, the correlation holds in the main, though in certain cases the numbers are too small to be of value for purposes of computation.[1]

---

[1] *i. e.* if self-redress is combined with a partial or incipient public justice it drags the case down to the second grade. If it is combined (as an alternative) with a regular system of public justice, it does not.

[2] In apportioning the Australians to one or other of the first two grades we are in agreement with the final judgment of Howitt, who paid special attention to this branch of Australian sociology. "It will be evident that a distinction is drawn between offences which merely affect the individual and are therefore left for him to redress, and those which may be called tribal offences, such as murder by evil magic, breaches of the exogamous law, or revealing the secrets of the initiation ceremonies. Such offences were dealt with by the elders and their leader, the headman of the tribe" (p. 354).

[3] For the wider society, not for the inner or primary group. The fractions arise from the counting of "probable" cases and partial instances (portions of a group) as one-half.

[4] Including a group of Dependent Hunters, *i. e.* Indian and other jungle tribes living in close association with more civilized people, and probably much affected by them. Omitting them, the fractions for the Higher Hunters would be ·92, ·08, ·05.

It must be added that when we find a partial public justice in the lowest economic grades, the circumstances make it sufficiently clear that the motive is to prevent self-redress. In the case of the Queensland tribes, where the evidence for public justice is the most definite that we have, this is not only clear from the nature of the offences dealt with,[2] but is specifically indicated by Mr. Roth, who says that the determined efforts to stop quarrels are due to their tendency to spread through the whole camp, all the tribal brothers on each side taking them up. The regulated fights and the negotiations and discussions in such tribes as the Narrinyeri and the West Victoria group, all point the same way. They are means of avoiding serious battles and persistent vendettas. Possibly the structure of Australian society, with its marriage classes cutting across the local groups and building up complex relations between group and group, possibly also the nomadic habits breeding casual intercourse with outsiders, together with the strong development of the belief in witchcraft as the cause of natural death, may have given to these attempts to mitigate vendettas the special prominence which they occupy in Australian social life.[3] Be that as it may, we can say with some definiteness that among the considerable number of peoples known of the lowest hunting levels, there is no case of regular public justice beyond the limits of the enlarged family, and that whatever public intervention in private relations is found, is clearly an attempt to mitigate retaliation. The "intensive" development of justice is matched by the extension, which is also roughly correlated with general cultural advance, of the society which forms the unit within which it holds good. At the lowest stage we have self-redress in some instances even within the enlarged family; then it appears mainly as between kinsfolk or local groups in a tribe or a substantial village. Then there is peace within the village, and feuds of villages, till these are welded into a petty state. Retaliation now becomes distinctly differentiated from war, but war itself is, at bottom, the self-redress of a community within the entire circle of nations, and the final elimination of the principle it embodies is yet to come.

---

[1] The only class that causes any doubt is that of the "Dependent Hunters" in Asia. These occupy in some cases an ambiguous position between tribes and castes, while in any case they have been greatly influenced, especially as respects governmental arrangements, by the more civilized societies to which they belong. If, however, we include the more independent among them with the other Higher Hunters, we get in the result a ratio which is just the same as that for the Lowest Agriculture.

[2] *e. g.* homicide, as such, is no crime. If a man kills his wife he must give up a sister to his wife's friends for death. Homicide is punishable with death when it would lead to revenge (Roth, p. 141).

[3] Further, the expiatory meeting is a form of atonement, which is replaced among the Higher Hunters, and still more by more advanced societies, by composition. But composition is not so provocative of formal interference by outsiders, and does not, therefore, for our purpose, remove a case from the lowest class.

There is further direct historical evidence among most civilized peoples of a development from the private to the public system. Ancient Egypt is the principal exception. Here we have no evidence from the slight indications in the records of private justice[1] or even of a transitional stage. Regular courts with witnesses existed from the old Kingdom,[2] and we observe that even political criminals were brought to trial.[3] Torture was used, and under certain circumstances we read of something like an oath of purgation.[4] The death penalty was not infrequent, though in the 18th Dynasty reserved for Pharaoh.[5] Mutilation, especially the cutting off of the nose or ears, was in use, and the rod is the regular mark of justice.[6] The too insistent complainant might himself get beaten.[7] Punishment, at least in political cases, might be collective, involving a man's whole family.[8] The kingly power was arbitrary and might be tyrannical,[1] but we hear of enactments against official extortion corruption.[2] On the other hand, the true norm of punishment is ideally fixed by the gods, priests formed the tribunals, and in the New Kingdom petty cases were decided at the local shrines.[3] On the whole, justice in its earlier phase, regulated in principle, more or less arbitrary in effect, using in the main rational procedure but employing torture, the rod, and severity in punishment, tending to laxity and corruptness in administration, is fairly exemplified in ancient Egypt.

---

[1] Apart from the right to kill a faithless wife and her lover (Gardiner, *Enc. Religion*, art. "Ethics and Morality—Egyptian," p. 480).

[2] Erman, *Aus dem. Pap.*, p. 82. (Witnesses required in a will suit.)

[3] *e. g.* in the Harem conspiracy (20th Dynasty), where the judges are even warned against over-zeal (Breasted, *Ancient Records*, iv. esp. p. 213). Even in the summary treatment of treason the accused are to be confronted with witnesses and then drowned secretly (Erman, *Fall Abgekur. Justiz.*, p. 9 *et seq.*).

[4] In the story of Peteesi (Griffith, iii. 105), two priests are made to swear that they are not guilty and to pay damages. Perhaps they are paying for their fellows who had done the mischief (cf. Breasted, *Records*, iv. 259). The oath here is a kind of conditional curse, and is apparently taken as sufficient purgation after a severe examination. For the torture of a woman, cf. p. 271. The instrument was the bastinado.

[5] Gardiner, 480.

[6] A private citizen of the 5th Dynasty is pleased with himself because "Never was I beaten in the presence of any official since my birth" (Breasted, i. 125).

[7] See incidents in the story of the Eloquent Peasant (Gardiner, *Die Klage des Bauern*, p. 12), which is a stinging satire on official indifference.

[8] "Slay him (an unruly vassal), wipe out his name, [destroy ?] his kinsfolk; suppress his memory [and ?] his dependants who [?] love him." Instructions of King Mery-ke-re (Middle Kingdom, Gardiner, *Journal Eg. Arch.*, Jan. 1914, p. 24). Cf. the extradition treaty of Rameses II., where the punishment of wife and children is barred by agreement (Breasted, iii. 173), and the curse calling on Isis to pursue the wife and Horus the children of the offender (*ib.*, p. 86).

In all other civilized codes we find historical evidences of an originally private system and a gradual transition to rational public justice. In the code of Hammurabi, courts exist and witnesses are mentioned, but that punishments were always public, except in the case of the erring wife, does not seem so clear as Kohler and Peiser think (*Hammurabi's Gesetz*, § 126). Certainly the provisions for punishment are saturated with the ideas of the blood feud (cf. above, pp. 85–88). In India the law books present us with developed codes of public justice, but self-help is allowed in certain cases, and in others it is open to every man to execute the offender (Oldenburg, in Mommsen, p. 72). Thus, in Manu, a list is given of eighteen cases with which the courts deal (viii. 4–7), but self-help is countenanced, and homicide is justifiable, "in a strife for the fees of officiating priests, and in order to protect women and Brahmanas." "By killing an assassin the slayer incurs no guilt, whether he does it publicly or secretly."[4] Further, crimes in general were atonable, including murder, except that of a Brahman. The fine went originally to the family, and so was true composition, depending on the caste of slayer and slain. In the law books, however, it falls to the king. Chinese tradition places the first public execution in the reign of Huang-ti, 2601 B.C., before which time chiefs had fought with one another and taken no prisoners (Alabaster, 52). The ten "abominations" include offences against the State, religion and the family, but no ordinary "private" offence. Apart from these ten all offences were commutable, though, at least in modern law, at the discretion only of the sovereign (Oppenheimer, p. 111). The fact, however, is rightly taken by Dr. Oppenheimer as evidence of their original character as private wrongs. In the present law vengeance and composition are in general forbidden (Alabaster, pp. 5, 6), but a son is justified in killing his father's murderer on the spot (*ib.*, 165), and if he kills him afterwards will only be bambooed. Similarly, the husband may kill his wife's lover on the spot, and the wife herself with a relatively light penalty (*ib.*, 251). Primitive Arabic justice is founded on revenge, and both the Israelite and Mohammedan codes are developed on these lines. In Mohammedan law retaliation still plays a considerable part. In Mohammed's time the blood feud was in full vigour. Mohammed imposed the death penalty by law for wilful murder and enforced composition for involuntary homicide, the wer being one-half for a woman and one-fifteenth for a pagan, all the kin being responsible for it (Dareste, p. 64). Wounds are also punishable by retaliation or composition (*ib.*, and Hughes, *Dictionary of Islam*, p. 481). The retaliation is executed by the next of kin (Hughes, 481), but, if legitimate, only with the judgment of a court. Private revenge without sanction is, however, not entirely excluded (Post, i. 260).

---

[1] See the curious recommendations in the Instructions of Mery-ke-re, *loc. cit.*, p. 26.

[2] Breasted, iii. 26, 31, etc. Contrast, however, Griffith, *Papyri*, iii. 98: "There is no profit in going into the house of judgment. Thine adversary is richer than thou."

[3] Cf. Gardiner, *Enc. Rel.*, *loc. cit.*, p. 480.

[4] Manu, viii. 348–51; cf. Vasishtha, iii. 15–18, 24, who among six kinds of assassins reckons an incendiary and the abductor of another's wife.

The distinction of private and public offences lies at the foundation of Roman law. Perduellio, a direct act of hostility to the state, is the oldest public crime (Hitzig, in Mommsen, p. 37). Parricide as a crime is older than the XII Tables and by tradition as old as Numa. But the original meaning of the word is not certain (*ib.*, 38; Oppenheimer, pp. 121, 122). If it included the killing of any free Roman this is a case of public punishment of a private offence from a very early epoch. On the other hand, the "law of Numa," "si quis hominem liberum dolo sciens morti duit parricidas esto," seems to preserve the tradition of some narrower scope for the original meaning of paracidium, and of some definite institution by which murder of a free man was identified with it and for the first time publicly punished. That private vengeance held for homicide Hitzig, (*l.c.*) takes as probable but unproven. Bodily injuries, however, are still punishable in the code of the XII Tables by talion, or compensation, and the law made no distinction between intentional injury and neglect (Hitzig, p. 42). Later developments of the law enforced the acceptance of composition, and distinguished intentional from unintentional injury. The killing of the *fur manifestus* is recognized in the XII Tables, while the *fur nec manifestus* pays double the value. Only theft of crops is a public offence (*ib.*, p. 39). The unchaste daughter or wife were judged originally by the domestic tribunal, and the adulterer might be killed if taken *in flagranti*. The punishment of rape as a public offence is not primitive (*ib.*, p. 41). Altogether the history of private offences shows the gradual suppression of self-help. The first step is to regularize and restrict it, the next to protect agreements for composition, the next to enforce it on both parties (*ib.*, p. 36). In general, the development of Roman criminal law moves clearly from the stage when only "public" offences are publicly punished, through the regularization of private vengeance, to the principle that a serious offence against a free man, and finally even the "unfree," is an offence against the state. The only obscure point is the early history of murder.

Early Greek custom was under the protection of the oath or curse (cf. *Iliad*, IX. 453–6, the curse on Phœnix—

θεοὶ δ' ἐτέλειον ἐπαρὰς
Ζεύς τε καταχθόνιος καὶ ἐπαινὴ Περσεφόνεια)

and of the gods, in particular of Zeus who sent storms if men "by violence gave crooked judgments in the market place" (*Iliad*, XVI. 387). Such judgments were given by councils of the elders on the free submission of the parties or by the king (Wilamowitz Möllendorf, *ap*. Mommsen, p. 21), but we hear of no criminal justice (Freudenthal, *ib.*, p. 9). The homicide, voluntary or involuntary, flies the country. The relatives exercise vengeance (Freudenthal, *ib.*) but may accept composition, and the slayer—

ἐν δήμῳ μένει αὐτοῦ πόλλ' ἀποτίσας.

Historic Greece has everywhere a fully developed system of public justice with rational procedure, with no criminal process for unintentional offences (Freudenthal, *ib.*, 11). But the Draconian murder-trial is simply a state-regulated vengeance (Wilamowitz, p. 28). In Attic law the "public" character of "private" offences is, perhaps, first fully recognized by the law of Solon enabling any citizen to prosecute (Freudenthal, p. 10, Wilamowitz, p. 25). But residual traces of self-redress remain in the limitation of the right to prosecute for homicide to the nearest relatives, and the right of forgiveness (*αἴδεσις*) by the relatives or the dying man. Apparently the involuntary homicide could be kept in exile at the will of the relatives to a late period (Aristotle on the Constitution of Athens, chap. lvii. and editor's note). Homicide on the highway was not punishable in Attica before the end of the fifth century (Wilamowitz, *Staat und Gesellschaft*, p. 38).[1]

---

[1] In a broad review of the whole subject, Sir P. Vinogradoff now shows that in many of the most important crimes against individuals all initiative lay with the sufferer or his relatives on lines derived from the original tribal constitution (*Historical Jurisprudence*, vol. II., Greece, chap. ix., esp. p. 167).

For Germany, the list of offenders publicly executed in Tacitus (chap. xv) consists of *proditores, transfugae ignavi, imbelles*, and *corpore infames*. This, whatever the exact meaning of the last term, accords well with an ordinary list of "tribal" offences. Tradition, language, and comparison of the codes shows that certain offences were held in contempt (Nithingswerk in North Germany) and punished with outlawry involving death unless divine pardon was obtained (Schröder, 77). These include breaches of the special peace of the temple, the meeting, or the house, acts dangerous to the public, black magic, etc. Of private offences the list includes only unnatural offences, murder and theft. In these last two cases the point was their secrecy. Murder in particular is a concealed and denied manslaying, and the cowardice which renders it a Nithingswerk is the attempt to escape the feud. Secrecy is also the contemptible element in theft, open robbery is not Nithingswerk. Thus, in principle, offences against individuals are not publicly punished, but only a certain cowardly and contemptible way of performing them. As such the private wrong gave rise to a feud or to composition. This might be effected purely between the parties or in court. In the latter case the court took a portion of the fine (Schröder, p. 80). Roethe (Mommsen, p. 63) thinks the legists inclined to overstate the interference of the community, and holds that pure self-redress is the original institution. He points out also that the Sagas illustrate vengeance for unintentional homicide. The gradual and partial distinction is indicated by Brunner (*ib.*, p. 55). Partly based on military conceptions of honour, the Teutonic code has more than once had to make concessions to the military class tending to the readmission of self-redress (cf. Brunner, p. 56; Oppenheimer, p. 129), and even to the present day the same influence may be traced.

Nothing marks the re-barbarization of Europe in the Early Middle Ages so strongly as the fact that the system of public justice built up in the Græco-Roman civilization gave way to the barbaric system. On the other hand, the services of the Mediæval Church in deprecating vengeance and upholding social peace ought not to be forgotten. So great a change as the suppression of vengeance by justice is not accomplished but by slow degrees, and in Europe the old system left its legacy to the modern world in the form of the duel. The peculiar notions of honour engendered by militarism maintained in the classes whose trade was fighting the belief that the stain of a disgraceful deed could be wiped out by superior skill in sword-play, while it was the bounden duty of a man who had suffered a mortal injury to give his traducer or assailant the opportunity of also killing him. Such beliefs, so deeply rooted in the habits of a military caste, long survived the prohibitions of the Church and the edicts of kings (see *Decret. Grat. C. J.*, 464, referring to the judicial duel). In the *Decret. Greg.*, 805, a clerk is to be deposed for duelling, and tournaments are forbidden (p. 804). The latter, however, were legalized by John XXII. (p. 1215). The Council of Trent threatened not only duellists, but kings or feudal lords who allowed duelling in their territories with excommunication (*C. J.*, pp. 98, 99). In England the duel succumbed to the cool common sense of middle-class juries. On the Continent, though undergoing a continual process of attrition, it is maintained in a dishonoured old age among such other perquisites of the military class as the right to run unarmed citizens through the body for an alleged insulting word.[1]

To the evidence of the historic civilizations must be added certain instances in the uncivilized world where tradition preserves the memory of an extinct system of self-redress.[2] Lastly, the case of justice and the general maintenance of order is perhaps the only department of ethics in which we may adduce a theoretical argument in confirmation of the historical evidence. For the community with the better order has palpably a better chance of survival than the more anarchical, and, culture for culture, it is very unlikely that the Hunters or Agriculturists of earlier epochs would be better governed or more peaceably ordered than those of our own time. The probabilities are all the other way, and if any tribes have survived in spite of very slight acquaintance with the arts, it is more likely to be those who knew how to cultivate internal peace and good fellowship than their opposites. We may infer that if we could see the ascending scale of society set out in time as we see it through anthropology at what is (relatively to the duration of human society) a single moment, the correlation of the methods of justice with the general advance of civilization would be not less close but closer than that which we have seen.

---

[1] It might be said that a society where duelling obtains ought to be classed in the third of our four grades (above, p. 106), and that modern continental countries would therefore fall below many barbaric peoples. But this would be to overlook the exceptional character of the duel as (1) the privilege of the upper class, (2) contrary to the letter of the law, (3) only justified in special cases in accordance with the code of honour, (4) neither applicable to the punishment of crimes nor the maintenance of civil rights. If, in fact, we found any barbaric society with vengeance so circumscribed, we should include it in our highest class, as, in fact, we have always done where only vengeance on the adulterer or the faithless wife is allowed.

[2] *e. g.* the Araucanians (Latcham, *J. A. I.*, xxxix. 355), the Sonthals (Man, *Sonthalia*, p. 91), and the Kols (*ib.*). These are important as appearing among the Indian peoples where self-redress has generally disappeared.

Our argument does not go to prove the development of impartial justice from vengeance. On the contrary, in some very simple societies the evidence for vengeance is slight. They are peaceable people, who seldom quarrel among themselves, and that is probably why they have been able to maintain themselves with so slender a material equipment through the ages. It goes to show rather that the root of public intervention is the sense of the common safety. Hence the early punishments of sacral offences. Hence the solidarity of clan or group against others. Hence the mitigation of vengeance and the assumption of communal protection in its place. Hence the limitation of impartial justice to whatever group really feels itself to be one. Hence, finally, the protection of all members of society when all are really felt to be morally members of one body. Sympathy is an impulse leading to this consummation, but occasional sympathetic action is precisely not justice because it is based on a personal feeling. Nor is the sense of solidarity justice, because it ignores the individual. It is the fusion of the two, of the feeling for another and the enlarging conception of the welfare of the whole, which constitutes the basic material of true justice, wherein, as in all ethics, a rational impulse defines and harmonizes the prompting of innumerable elements of feeling and emotion.

9. *Procedure.*—The mere establishment of impartial justice is by no means the same thing as the formation of a Court of Law in the modern sense. The primary function of a primitive tribunal is not so much to discover the merits of the case and make an equitable award, as to keep the peace and prevent the extension of wild and irregular blood feuds. What the court has to deal with is the fact that a feud exists. A comes before it with a complaint against B of having killed his kinsman, or stolen his cattle, or carried off his daughter. Here is a feud which, in the absence of a court, A will prosecute with his own right-arm and that of his kinsmen if he can get them to help him. B, again, will resist with the help of *his* kinsmen, and so there will be a vendetta. The court, whose primary object is to secure a settlement, does not go into nice questions as to the precise merits and demerits of A and B, but it can prescribe certain tests whereby the appellant or the defendant may establish his case. It sets the litigant "a task that he must attempt. If he performs

it, he has won his cause."[1] The performance of this task is not, to our minds, proof of the justice of his cause. It is rather the compliance with a legal and orderly method of establishing a case, but at the stage we are considering it was probably regarded as satisfying justice, at least as far as justice claimed to be satisfied.

What task, then, would the court award? It might be that the litigant should maintain his cause with his body. The parties would then have to fight it out in person or by their champions. Here we have the regulated fight in the form of a judicial duel carrying a sentence as its result. Again, the court might put one or both parties to the oath. But this is not the oath of the modern law court—that is to say, it is not a solemn asseveration of the truth of certain evidence of fact, but an assertion of the general justice of the claim alleged, or of its injustice, as the case may be. And as the feud will not be waged by the individual claimant alone, but with the aid of all his kindred, so the court will expect the kindred to come and take the oath along with him. Hence the institution of oath-helpers, the compurgators, who are in point of fact the fellow-clansmen, all bound to the duty at this stage of swearing their friend out of the difficulty, just as before they were bound to help him out of it by arms. The compurgators are simply the clansmen fighting with spiritual weapons instead of carnal ones. Success in the cause will depend not on the opinion formed by the court as to the veracity of one side or the perjury of the other, but on the ability of the parties to get the full number of compurgators required, on formal correctness in taking the oath, and if both parties fulfil all conditions and no further means are available for deciding between them, on certain rules as to the burden of proof.[2]

The provision of such further means of deciding between the parties is logically the next step. So far, the judicial process has appeared merely as a substitute for the blood feud, but both the oath and the judicial combat point the way to a higher ideal. The court itself is not in a position to try the merits of the case unless it be some very simple matter of the criminal caught red-handed, but it may refer the decision to the Unseen Powers, to the gods, or to the magical qualities inherent in certain things. Thus the judicial duel, instead of being a mere carnal fight regularized and limited by certain rules, may be conceived rather as an appeal to the judgment of God, and the victory as His sentence which the court hesitates to pronounce on the basis of its merely human wisdom. Similarly the oath—though less than evidence as we conceive evidence—is also more, for it is an appeal to powers in which primitive man implicitly believes, to take vengeance on him who swears, if his cause be not just. Hence the form of the oath is everything, for the Unknown Powers are great sticklers for form. The oath-taker calls down their punishment on himself and his family by a set formula which they will rigidly obey. If in the formula he can leave himself any loophole of escape, the oath is void : it is no true summoning of the vengeful powers, and the court will disregard it, but if it is complete and sound in point of form, then there is no escape. One of two things must happen : either the oath was true or the curse will fall, and thus perjury brings its own punishment.[1]

---

[1] Pollock and Maitland, ii. 602.

[2] Which oath prevailed in case of a conflict would be decided according to the custom ruling the case. One party would be "nearer to the oath" than the other. For instance, where the criminal is caught in the act, the oath of the prosecutor with his oath-helpers is conclusive proof, and the offender has no opportunity of self-defence (Schröder, p. 363; cf. Pollock and Maitland, ii. 579). In the Frankish period the complainant might also, if the circumstances allowed, demand the ordeal; in other cases, with a few exceptions, the burden of proof was on the opposite side (Schröder, *op. cit.*, pp. 363–366). Where the oath is not decisive, the parties go to the duel or to the ordeal.

Hence it is that for any given charge the law may call upon a man to purge himself by oath, or perhaps to purge himself along with a specified number of oath-helpers who will suffer with him if the oath is false, and the oath-helpers required may be increased according to the seriousness of the crime. If the oath fails the prescribed punishment follows. If it is duly taken, then either the accused was innocent, or he had inflicted the punishment entailed by the broken oath on himself and his oath-helpers.

But the consequences of a false oath were not immediately apparent. If the court wished to have the judgment of the Unseen Powers before it some more summary process was necessary. This was found in the Ordeal, a test to which both parties could be submitted if necessary, and of which the results were immediate and manifest. Probably no institution is more frequent at a certain stage of civilization than that of testing the truth or falsity of a case by a certain magico-religious process—the eating of a piece of bread, the handling of burning iron or boiling oil, jumping into water, walking through fire, exposure to wild beasts, and so forth. The details vary, though even in detail resemblances crop up at the most remote periods and in the most remote places, but the general principle is still more clearly constant through the ages and the climes.[1] Truth cannot at this stage be tested by human evidence. At most the criminal caught red-handed may be summarily dispatched upon the evidence of eye-witnesses given there and then, but the complicated civil or criminal processes of the civilized world imply an intellectual as well as a moral development which makes them impossible at an early stage. It is the gods who judge; the man who can handle hot iron is proved by heaven to be innocent; the woman whom the holy river rejects is a witch; he whom the bread chokes is a perjurer. Nor are these tests wholly devoid of rational basis; it is not so difficult to understand that the guilty man would be more liable to choke than the innocent, not because bread is holy, but because his nerves are shaken. It is quite intelligible that in a credulous age the false oath would bring its curse in the form of a will paralyzed by terror, just as we know that amongst many savages witchcraft really kills through the sufferer's intense fear of it. Lastly, if the criminal may be ready to take his chances of the curse in preference to the certainties of the scaffold, he may find it difficult to get compurgators to stand by him, and in the face of their plain knowledge involve themselves in the same risk.

---

[1] Thus the subsequent misfortune is taken as proof of perjury, and sometimes with a certain inconsistency the secular arm is then called in to increase the penalty. Thus, among the Kondhs of Orissa, and also among the Congo people, if the curse falls, the oath-taker is banished along with his family (Post, ii. 493).

---

[1] Among the Australians we have the ordeal in the form of the expiatory encounter. This seems to be trial and punishment in one, or, perhaps, as we have seen, it is rather atonement than either. Magical processes were, indeed, employed to discover the direction in which the man whose witchcraft caused a death might be found. But this, again, belongs to detection rather than trial. If we, then, omit the Australian cases we do not find the ordeal among the Lower Hunters, and it is very rare till we reach the second stage of Agriculture. Thereafter it becomes very common (*Simpler Peoples*, p. 80).

Two or three Australian authorities speak of some sort of trial, *e. g.* Beveridge of the Riverina people; Mrs. Parker of the Euahlayi (but with reference, I think, only to the spear-throwing); Dawson of West Victoria, and Taplin of the Narrinyeri. In these and other cases we are certainly to suppose excited arguments between accusing and accused local groups, but we have no clear evidence of anything more. It is only in the North and North-West Central Queensland districts that Roth speaks clearly of a sort of inquiry by the old men into the merits of the case. With these exceptions we found no indications of a trial among the Lower Hunters, only two among the Higher, and three in the lower divisions of Pastoral and Agricultural peoples. In the Higher Pastoral and Agricultural stages they become common (*loc. cit.*).

10. Thus by degrees there develops the conception that it is the duty of the court to try the case, to obtain proof of facts, to give its own verdict based on its own judgment, and execute its own sentence by its own officers, and which may take the initiative through its own officers. The steps by which this change is achieved belong in detail rather to the history of jurisprudence than to that of comparative ethics. Only certain broad features of the new phase concern us. Its primary condition is the fuller development and clearer expression of sentiments that are present from the first, but it is naturally stimulated and furthered by the formation of an effective organ of government. The elders or the petty chief of the village community hesitate to carry out a death sentence or inflict corporal punishment for fear of involving themselves in the blood feud.[1] Where there is an executive power with sufficient force behind it to raise its officer above the fear of revenge, public justice can have full play. Hence the decay of blood revenge and the rise of public justice are frequently associated with the growth of kingly power. For example, in Europe in the early Middle Ages we have seen that certain offences were treated as breaches of the king's peace. This peace was a protection afforded in the first instance to certain places and times, but it was gradually extended, largely it would seem, through the king's protection of the roads—"the king's highway"—to all places and all times. Thus the act which had been a breach of the king's peace, punished by the withdrawal of his protection only when committed at certain times and places, now became an offence against him at all times and places. Its punishment was still outlawry. But as outlawry deprived a man of all rights, it enabled the king to inflict what penalty he chose. The criminal, in fact, was at his mercy: any penalty short of death with forfeiture of all goods would be an indulgence, and hence the Royal Courts could fix a scale of punishments at their pleasure.[2]

With the growth of public justice the function of the courts is changed: they have no longer to supervise the feuds of hostile families, but to maintain public order, to detect and punish crime, and to uphold innocent people in their rights. This involves numerous changes. In the first place, self-help, the obtaining of satisfaction by the strong hand, is no longer necessary. The injured man can get a remedy from the court, and vengeance is forbidden. The victory is not immediate, and often the state has to come to some compromise with the old system. For example, vengeance may be allowed *in flagrante delicto*, or within a certain period after the offence. Where state justice is very weak, an asylum may be granted within which revenge must not be executed; in other cases where the process is further advanced and justice is getting the upper hand, revenge is allowed *only* with the consent of a court.[1] Or, lastly, excluded from all ordinary cases, revenge is tolerated as a concession to human weakness in cases where strong passions are excited—for example, in breaches of the marriage law to this day in many civilized countries.[2] The transition was the harder because it involved a fundamental ethical change. From its beginning, as we have seen, social order rested on the readiness of every man to stand by his kinsmen in their quarrels. Hence the duty of avenging the injured kinsman, and therefore of loving one's neighbour in this sense and hating one's enemy, was the most sacred of primitive principles, bound up with everything that made a common life possible. Public justice bade men lay aside this principle, and its triumph constitutes one of the greatest of social revolutions.

---

[1] So Prof. Robertson Smith remarks on the appearance of corporal punishment in Deuteronomy, that it is evidence of the comparatively settled state of the country and the growth of the social order since the time of the Book of the Covenant. No Arab Sheikh would inflict corporal punishment on a tribesman for fear of revenge (Deut. xxv. 3: Robertson Smith, *Old Testament in the Jewish Church*, p. 368).

[2] Jenks, *Law and Politics*, pp. 109–117; Pollock and Maitland, ii. 453–463, etc.

But if the kindred be no longer allowed to avenge themselves, the corresponding right of the offender to make peace with the kin is also withdrawn.[3] A crime is now a public affair, and in varying degrees according to time and country the public authority takes upon itself the function of maintaining order and of discovering as well as punishing offenders.[4] The trial ceases to be a milder form of the blood feud. The complainant no longer exposes himself to equal punishment by way of retaliation in case he loses his suit. What was previously accusation now becomes denunciation.[1] Again, though the injured party may set the whole process in motion, the result will differ vitally according to the nature of the act of which he complains. Justice, having public interests in view, will count not only the magnitude of the injury suffered, but the degree of culpability in the man who inflicted it. Vengeance, the object of the older process, breaks up into the two distinct ideas of punishment inflicted by the judge, and restitution assigned to the complainant. Civil and criminal justice are distinct.[2]

---

[1] This, in strictness, is Mohammedan law (Kohler, quoted in Post, i. 260).

[2] For instances see Post, i. 260, 261. Post quotes the Japanese Law Book of 1873, which treats premeditated blood revenge as murder, but excuses the son who strikes down the murderer of his father on the spot.

[3] See Pollock and Maitland, ii. 485.

[4] The rise of impartial public justice in Europe connects itself with "Trial by Inquest." Early in the Middle Ages the bishops made diocesan tours and held inquests into public morals, and in the ninth century they employed a "jurie d'accusation," which indicated delinquents. These were at first allowed to purge themselves by oath, but this right was withdrawn under Innocent III., and the court was allowed to proceed *per inquisitionem*, holding an inquiry, and requiring not purgation but defence. The accuser at this stage is a public authority, not merely a private enemy prosecuting a feud. A corresponding development occurs in England when the Grand Jury, as representing the common knowledge of a neighbourhood, presents a list of criminals for trial. The accusation could not any longer be submitted to trial by battle, as the accused could not fight the

11. But once become serious in its determination to investigate the case before giving sentence, public justice could not long be satisfied with the older supernatural machinery. In mediæval Europe it was early a matter of remark that the battle was not always to the just. "We are," says the Lombard king, Luitprand, "uncertain about the judgment of God, and have heard that many through the battle lose their cause without justice, but the Law itself, on account of the custom of our race of Lombards, we cannot forbid." The question was matter of controversy during the ninth century, Agobard, Archbishop of Lyons (*d.* 840), arguing against trial by combat and the ordeal, while Hincmar, Archbishop of Rheims (*circ.* 806–882), supported them.[3]

It was therefore a great step in advance when ordeals, which had been adopted by the Church after the barbarian invasions, were condemned by the Lateran Council of 1215. As a conse-

---

whole Grand Jury (Stephen, i. 254), and as ordeals were falling into discredit the only resource was the Inquest. This was a method, already in use in Norman law, of establishing facts by the sworn judgment of a number of men (petty jury) representing "the verdict of the country." Thus our system, though it has retained much of the accusatory character, has been deeply influenced by the Inquisition, or, as we call it, "Inquest."

[1] Esmein, p. 84. The "accusatory" method fell into disuse in France in the fourteenth century. But the penalty of retaliation was retained, though softened in application (*ib.*, 108). Denunciation was readily conceded in the case of commoners, while nobles still retained the right of combat (*ib.*, 85).

[2] The distinction is not affected by the fact that both results may be sought by a single process; *e. g.* in French law a criminal may be condemned to pay damages to the injured party by the same sentence which consigns him to prison.

[3] Taylor, *The Mediæval Mind*, i. 231, 232. Charlemagne ordered all men to believe the judgment of God without any doubt (Schröder, 307).

quence they disappear in England after the reign of John,[1] while the oath of compurgators is gradually converted into evidence to character. The ordeal by battle[2] remained, but an alternative was offered in the form of a judicial inquiry with witnesses and evidence. The accused might, in English phrase, "put himself upon his country," *i. e.* let his case go before a jury, men of his neighbourhood knowing the facts and prepared to testify to them, or, in French phrase, the accused could be offered the "enqueste du païs." And this alternative, if at first optional, soon manifested its vast superiority, and the settlement of all disputes and all accusations by an impartial tribunal, which has heard what both sides have to say, becomes an integral part of the civilized order.[3] But even-handed justice is not reached at one stride. The public authority, having once taken up the function of repressing crime, are more bent on efficiency in the maintenance of order than on nice considerations of justice to individuals. Their tendency is to treat the accused man as guilty, and means of proving his innocence are somewhat grudgingly meted out to him as privileges rather than as rights, while deficiencies of evidence are boldly supplemented by the use of torture. In English law, indeed, torture (except in the case of the *peine forte et dure*) never seems to have been fully recognized: if used by the absolute monarchy it was as a political instrument rather than as part of the ordinary machinery of law. On the Continent, on the other hand, owing partly, perhaps, to a stricter theory of the amount of evidence necessary for proof, partly to the fact that the authorities were more determined to suppress crime than to protect individuals from the possibility of undeserved suffering, torture became a recognized method of supplementing defective evidence. The judicial conscience was easier if it extorted a confession from a man before condemning him, than if it acted solely on evidence undistorted by physical suffering.[1] Even where torture was not allowed the accused was not always put on a level with the prosecution as to the right of giving evidence, calling witnesses and employing counsel. It is not until all these conditions are fulfilled that a Court of Justice can be said to come up to the ideal of a place in which the full merits of the case are investigated before a verdict is given. Even *now* it must be remarked than an English trial preserves much of the form of the old judicial combat. Its method of obtaining a verdict is still that of pitting attack and defence against one another. It may be that this is the best method of obtaining truth where human interests and passions are at stake, and that the advocate must always retain a place beside the judge: but what seems clear is that the power of the purse in retaining the best legal skill is a make-weight, especially in civil cases, of no slight practical importance; and it is possible that our descendants will look back upon a system which allowed wealth to count for so much before what should be an absolutely impartial tribunal, as not differing so much as we should like to think from the old ordeal by battle. The fight with the purse is not the ideal substitute for the fight with the person.

---

[1] Pollock and Maitland, ii. 599. In France, compurgation and unilateral ordeals almost completely disappeared in the thirteenth century. The oath with oath-helpers was still not uncommon in England, but the view "that you cannot wage your law about facts are manifest" was beginning to prevail (Pollock and Maitland, ii. 634).

[2] It was forbidden in France by St. Louis in 1260. "Nous defendons a tous batailles par nostre domengne et au lieu de batailles, nous mettons preuves de tésmoins," but this ordinance could not be imposed in a day upon the Signorial courts. Before the accession of Edward I., judicial combats were limited to felony, but one of the parties might prefer a jury. Champions for hire still existed (Pollock and Maitland, ii. 632, 633).

[3] For a long while the alternative was treated as optional in English law. The oath and the ordeal had been the old legal methods of proof, and "no one," say the *Leges Henrici*, with the air of resisting a monstrous and novel injustice, "is to be convicted of a capital crime by testimony" (Pollock and Maitland, ii. 650). But, urged by manifest necessity, the lawyers found indirect methods of compulsion; a man cannot be hanged for murder merely because he is proved by witnesses to have committed it, unless he first agrees to stand or fall by what they say, and forego his right to the ordeal. But though he cannot be compelled, he can be rigidly imprisoned until he gives his consent, and, finally, he can be pressed to death by the "peine forte et dure."

12. We have seen that public justice often led to severity in the process of obtaining truth; still more was this the case in the punishment of crime. Accompanying the growth of order in a barbarian society there is, as has been remarked above, a

---

[1] Torture was originally applied only to slaves in Roman law, but was extended to freemen in cases of treason and afterwards in other cases as well. It was originally unknown to the barbarians, but under Roman influence it was introduced into the Salic, Burgundian and other laws in application to slaves (Esmein, p. 93; Schröder, p. 369). Fostered by the need for evidence in the procedure by inquest, and by the determination to repress crimes, it gradually became, especially in Germany and Italy (Esmein, p. 284), a flagrant abuse. All the guarantees which the accused had were taken from him by degrees. The procedure became secret, he was not allowed to employ counsel or to cite witnesses. In this direction the inquisitorial process was pushed further in France than elsewhere; England was apparently saved from it by the gradual change which converted the jury from witnesses into judges of the case. It is noteworthy that the severity of the French procedure was accepted by the public and was even popular (*op. cit.*, p. 158). The public feeling of the period went with the authorities in concerning itself more for the suppression of crime than for supporting the rights of accused individuals.

tendency to substitute a system of composition for blood vengeance by a money payment. This system made for social peace, but, particularly with the increase of wealth and difference of rank, it lent itself to frightful abuses. Crimes, punished perhaps too fiercely in early society, became for the well-to-do too lightly and easily atonable, and it is not surprising that at the next stage of social development, in which the central power has consolidated itself and the executive has become strong enough to dismiss any fear of the blood feud, a period of severer punishment should set in. Crime now becomes a revolt against authority, a challenge to the powers that be, civil and perhaps ecclesiastical as well, to put forth all their strength to subdue it. Moreover, the central authority at its best acts in the interests of public order, and on the whole represents the principle of impartial judgment as between disputants, and of progress towards internal peace and the reign of law. On the other hand, order is still difficult to maintain and powerful families are recalcitrant. From such causes as these acting in combination the criminal law now reaches the acme of its rigour. Death penalties or savage mutilations are inflicted for offences of the second and third order, torture is freely used to extort confession, and the brutality of the mob is called in to supplement that of the executioner.

As to the severity, or rather barbarity, of the criminal law in Europe down to the nineteenth century little need be said, as the broad facts are well known. In England death was theoretically the penalty for all felonies except petty larceny and mayhem, from the Middle Ages down to 1826. This rule was subject to the exceptions based on "benefit of clergy," which originally meant the right of a clerk to be tried in the ecclesiastical courts; then, being extended to all who could read, became something of the nature of a class privilege, and finally, in 1705, the necessity for reading[1] being abolished, was converted into a means of grace. The punishment for a "clergyable" offence was to be branded in the hand and imprisoned for not more than one year, except in the case of larceny, which by the law of 1717 was punishable by transportation for seven years.[2] From the fifteenth century onwards a succession of statutes excluded more and more offences from benefit of clergy, and thus at the end of the seventeenth century such offences as arson, burglary, horse-stealing, stealing from the person above the value of a shilling, rape and abduction with intent to marry, were all capital "whether the offender could read or not."[1] In the eighteenth century the list was lengthened, but transportation was often substituted for the death penalty. Women were still burnt alive for the murder of a husband or master, or for coining.[2] Both men and women were whipped, the men publicly through the streets, the women as a rule privately, for petty thefts.[3] The pillory was still in use for perjury and other offences.[4] Meanwhile the state of the prisons, where innocent and guilty, debtors (often with their families) and convicted criminals were all huddled together without discrimination, was, when Howard began his work, a scandal of the first magnitude. Gaol-fever raged, prisons were still private property, and the prisoner, innocent or guilty, had to fee his gaoler and pay for every comfort and even for necessaries. In the Bishop of Ely's prison the gaoler prevented escapes by chaining his prisoners on their backs on the floor, and fastening a spiked iron collar about their necks. "Even when re-constructed it had no free ward, no infirmary and no straw; and debtors and felons were confined together."[5]

---

[1] Peers, and clerks in holy orders, however, retained special privileges.

[2] Stephen, i. 463, etc.

13. But even before Howard's time a new order of ideas was slowly emerging. As society becomes more confident in its power to maintain order, the cruelty and callousness that are born of fear are seen in a new light. More humane influences make themselves felt, and from that moment excessive severity begins to militate against the proper execution of the law, especially under a jury system like ours. With the advance of civil and religious liberty, political or ecclesiastical offences grow rare, and a breach of the law becomes more and more synonymous with a grave moral offence against society. The whole problem of criminal justice is thus transferred to the ethical plane, but the change raises problems which a century has been too short a time to solve. The general right to punish may be derived from the right of society to protect itself. This principle taken by itself[6] might be held to justify the barbarities

---

[1] *Op. cit.*, 467.

[2] In practice they were generally strangled first, but this depended on the executioner. Even the torture of the flames did not prevent an eighteenth-century mob from pelting and jeering at the victim. See the account of the burning of Barbara Spencer for coining in 1721 (Pike, ii. 287, 288).

[3] *ib.*, 380.

[4] Till 1816. For perjury till 1837 (*ib.*, 377).

[5] *Ib.*, 355.

[6] So taken it is a one-sided account. Punishment, like other actions, can only be justified as doing the maximum of good and the minimum of evil admitted by the circumstances to all concerned. If any evil (suffering or loss of character) is inflicted on the criminal which is not absolutely

of the old law, had not experience shown that extreme severity was not in reality an effective instrument of discipline, while it undoubtedly tended to harden manners and accustom people to witness suffering with indifference. Its dealings with the criminal mark, one may say, the zero point in the scale of treatment which society conceives to be the due of its various members. If we raise this point we raise the standard all along the scale. The pauper may justly expect something better than the criminal, the self-supporting poor man or woman than the pauper. Thus, if it is the aim of good civilization to raise the general standard of life, this is a tendency which a savage criminal law will hinder and a humane one assist. Moreover, the old rigour, so far as it rested on reason at all, was based on a very crude psychology. People are not deterred from murder by the sight of the murderer dangling from a gibbet. On the contrary, what there is in them of lust for blood is tickled and excited, their sensuality or ferocity is aroused, and the counteracting impulses, the aversion to bloodshed, the compunction for suffering, are arrested. Fear, on which the principle of severity wholly relies, is a master motive only with the weak, and only while it is very present. As soon as there is a chance of escaping detection it evaporates, and, it would seem, the more completely in proportion as the very magnitude of the penalty makes it difficult for a man really to imagine *himself* as the central figure in so terrible a drama. Finally, the infliction of heavy penalties for secondary crimes may induce a reckless despair, and the saying about the sheep and the lamb was but too apt a comment on the working of the criminal law at the time. Thus the first step of reform was to abolish the ferocious penalties of the old law. In this direction a long list of well-known and honoured names—Beccaria, Howard, Bentham, Romilly, Fowell Buxton, Elizabeth Fry—indicate roughly the intellectual and moral influences at work. The Society of Friends,[1] French Rationalists, English Utilitarians and the Evangelicals played their part in this, as in so many of the changes that have made the modern world. The movement was under weigh by the second third of the eighteenth century. Beccaria's book was published in 1764 and had an immediate success, bearing early fruit in the abolition of torture

---

necessitated by social security, or the ultimate welfare of the criminal himself, it is evil inflicted for its own sake, which is the essence of immorality.

[1] Already, in founding Pennsylvania, Penn had allowed capital punishment for murder alone. The Philadelphia society for relieving distressed prisoners was formed in 1776 (Wines, 142).

on the Continent. Branding was abolished in England in 1779. Capital punishment had been abolished for a time in Russia in 1753, and the purchase of prisoners as galley-slaves was forbidden by Maria Theresa in 1762. In England the *peine forte et dure* was abolished in 1772, and in 1770 a House of Commons Committee even reported that there were some offences for which the death penalty might with advantage be exchanged for some other punishment. These few indications show that the tide was beginning to turn. In France the movement was hastened by the Revolution. The Declaration of Rights in 1789 laid down the controlling principle of the modern theory that "the right to punish is limited by the law of necessity," and this was supplemented in 1791 by the declaration of the Assembly that "penalties should be proportioned to the crimes for which they are inflicted, and that they are intended not merely to punish, but to reform the culprit."[1] In accordance with this principle the Assembly made imprisonment the chief method of punishment, and founded the penitentiary system of France. In England the great reaction produced by the Revolution retarded the reform of the criminal law, but throughout the time of the Revolutionary Wars men like Romilly fought an uphill fight. He succeeded in suppressing the death penalty for pocket-picking in 1808, but his subsequent efforts to abolish capital punishment for stealing goods of the value of five shillings from shops were frustrated by the House of Lords.[2] Little progress, in fact, was made till 1832, when horse and sheep stealing ceased to be capital, and from this time onwards the list of capital offences was steadily reduced, till in 1861 murder was, for all practical purposes, the only one that remained.[3]

Meanwhile, as substitutes for the old savagery, there grew up first the transportation and then the penitentiary system. Regarded as a means of giving the offender a fresh start in life in new surroundings remote from his old bad associates and the memory of his crimes, transportation has much to recommend it, but it was clearly incompatible with colonial development. It was necessary to fall back on the prison system, and the efforts of reformers have been devoted to the task of making confinement—a thing soul-destructive in itself—as nearly compatible as may be with the regeneration of the prisoner. These efforts have hardly passed the experimental stage, yet certain results have emerged. The necessity for a classification which prevents the first offender from being contaminated by the hardened gaol-bird, the benefits of action and practical employment, the superiority of hope to fear as a stimulus to good conduct and the consequent advantages to be found in allowing the convict means of improving his position and even shortening his sentence by good behaviour, are matters of general agreement. But it is clearly necessary to go further than this. The plan of imprisoning a man for a longer or shorter term, and then, without asking what effect his experience is likely to have had on him, turning him loose again upon society, a broken human being less capable than ever of earning an honest living, cannot stand. The old way of hanging at least rid society of the criminal. It stood condemned for its utter barbarity, which was indirectly as harmful to society as it was cruel to the sufferer. The modern method is still a terrible penalty, at least to the better sort of criminals, and, far from relieving society of their presence, tends to harden and degrade them further. Hence judicious thinkers like Frederick Hill, in his report of 1839, soon recognized that a more thorough system was required. The offender must be reformed, and at need he must even be detained until he has given good promise of reformation, and society must help him back into honest ways.[1] The most thoroughgoing attempt in this direction is that of the Elmira system, followed now in several American states, in which, the sentence being wholly or within limits indeterminate, the fate of the convict depends on his own exertions. He can raise himself from a lower to a higher grade by continued good behaviour, and, finally, can obtain liberation on parole.[2]

---

[1] Wines, p. 86.

[2] Pike, 450.

[3] Pike, *ib.*; Stephen, i. 474. Together with murder, treason, piracy with violence, and setting fire to dockyards and arsenals remain nominally capital offences. It will be remembered that a case of treason was recently tried and the death sentence formally passed, but very shortly commuted.

14. Whatever the outcome of these experiments, the modern state stands committed to the humane method of criminal treatment, and could not revert to the old plan save at the risk of a general re-barbarization.[3] That being so, it is necessary to

---

[1] For the views of Frederick and Matthew Davenport Hill, see Wines, 217, etc.

[2] Wines, p. 220, etc.

[3] The modern reform of the criminal law is not the first attempt known to history at a mitigation of punishment. The Classical Chinese books condemn excessive corporal punishment as an innovation (Shoo King, xxvii. 3), and represent the practice of composition as a measure of mercy. It has, unfortunately, a darker side (see Legge, note, pp. 608–9). Confucius continually protests against governing the people by punishment, and declares that within 100 years a series of good rulers would be able to dispense with capital punishment. Under Buddhist influences King Asoka of Magadha abolished capital punishment, at first for certain crimes,

push the new method through and to treat the criminal throughout as a "case" to be understood and cured. We touch here the scientific conception underlying the modern theory of punishment. Crime, like everything else that men do or suffer, is the outcome of definite conditions. These conditions may be psychological or physical, personal or social. They arise in the character of the agent as it has grown up in him from birth in interaction with the circumstances of his life. We may recognize them in social surroundings, in overcrowding or underfeeding, in the sense of despair produced by the denial of justice, or in the overweening insolence of social superiority. But whatever they may be, if we wish to prevent crime, we must discover the conditions operating to produce crime and act upon them. This does not destroy, but defines personal responsibility. The last link in the chain of causation which produces any act is always the disposition of the agent at the time of action, and unless dominated by ungovernable impulse,[1] this disposition is always modifiable by the introduction of a fresh motive as a weight in the scale. But though not destroyed, responsibility is transformed by science, and with it the whole conception of punishment.[2] When a wicked act was held to be something

---

and by the thirty-first year of his reign, altogether (Duncker, iv. 535). In the tenth and eleventh centuries a wave of feeling against capital punishment passed over Europe, but the feeling was religious rather than humanitarian, and allowed the substitution of savage mutilations. Hence the Conqueror's edict, "Interdico etiam ne quis occidatur aut suspendatur pro aliqua culpa, sed eruantur oculi et testiculi abscidantur" (Pollock and Maitland, i. 88, ii. 461). The exchange was doubtful gain, and without legislation death resumed its place as the penalty for felony by the thirteenth century. Clerks continued to have difficulties of conscience as to drawing up capital sentences and avoided writing the decisive words, and the tradition, as every one knows, persisted through the great days of the religious Inquisition. What distinguishes the modern movement is that it rests neither on the mere sentiment of mercy, nor on any theory of the intrinsic wickedness of the taking of life, but on an attempt, however imperfect as yet, to render a scientific account of the causes of crime and the effects of punishment, both on the criminal and on society at large.

[1] This makes no exception to the general statement that character is the cause of action, since that paralysis of the will which leaves a man the sport of impulse is itself a matter of character. As to control of man's conduct by heredity much nonsense is talked. Heredity is not a force controlling a man from without, but a short expression for the supposed antecedent causes of the qualities which make him what he is, and by what he is, he is to be judged, so far as he is judged at all.

[2] Responsibility, properly understood, is definable as the capacity to be determined by an adequate motive. A man is responsible who knows what is expected of him, understands the consequences of his action, and is determined therein by that knowledge. Reward and punishment, praise and blame, are therefore justly awarded in so far as they affect action. Beyond this, retribution is inapplicable, and praise and blame pass into admiration and pity.

arising in a spontaneous arbitrary manner from the unmotived evil choice of a man, the vindictive retribution which is founded on instinct and fostered by the needs of early society seemed amply justified. When good and evil alike are seen to grow out of assignable antecedents by processes which calmly judging men can pretty closely foretell, to rest on laws of growth and disease which apply to character as other laws apply to the physical organism, to express the lack of imagination or low power of reasoning which makes men hard, cruel and unjust, or to flow from the over-excitement or insufficient satisfaction of physical impulses that makes them a prey to lust or alcohol, then every thinking man is made to feel in a new sense that but for the grace of conditions which he has only very partially and imperfectly controlled, there where the criminal passes to disgrace and misery goes he himself, the juryman, the judge, the newspaper reader who explodes in satisfaction over the swinging sentence. No one can fully face the problem of responsibility and become, however dimly, aware of the multitudinous roots from which character and conduct spring, without feeling the utter inadequacy of the retributive theory of punishment. Vindictiveness has its natural sphere in the stage at which crime is only known as an injury to be revenged. As soon as it becomes a wrong act to be punished, the nature of wrong and the meaning of punishment have to be reconsidered. If the first principle of rational ethics is that action can only be justified by doing good to those whom it affects, this principle receives a striking confirmation from the one quarter in which its application might seem doubtful. For a natural impulse makes us desire to harm the wicked, but the history of criminal law and the philosophical analysis of responsibility combine to prove to us that this is the impulse of the old Adam and not warranted by reason or justice. Justice, in punishment as in other things, seeks the good of all whom it affects, of the criminal as of the injured party. Yet all true punishment inflicts pain, for precisely the truest punishment consists in the full realization of the character of what one has done. This realization, with all the mental misery that it involves, we may justly wish to be the lot of every criminal, whether convicted or unconvicted, whether despised or, like the greatest offenders, honoured by the world. So far pain is rightly attached to wrong-doing as, ethically speaking, its inevitable consequence. But any other sort of pain, any physical suffering that has no such healing moral effect, may gratify an animal thirst for vengeance, but has no solace for our moral thirst for the triumph, even in the mind of the wrong-doer, of the righteousness which he has set at naught.

The modern state upholds its members in the enjoyment of their rights and gives them redress for injuries to themselves in the civil courts. It also intervenes on its own motion to maintain public order by the punishment of law-breakers. Religious and political offences falling into the background, legal offences tend to be restricted to criminal acts, and punishment to be proportioned to the imputed degree of moral guilt.[1] But this ethical view of punishment, when pushed home, compels the admission that the individual theory of responsibility is no more final than the old collective theory, and punishment is compelled to justify itself by its actual effect on society in maintaining order without legalizing brutality, on the criminal in deterring him or in aiding his reform, in both relations as doing good, not as doing harm. The criminal, too, has his rights—the right to be punished, but so punished that he may be helped in the path of reform.

Briefly to resume the main phases in the evolution of public justice, we find that at the outset pure anarchy or self-redress is qualified first by the sense of solidarity within the primary social unit. This expresses itself first in the repression of offences, especially of a sacral character, held dangerous to the group as a whole, and then in the control of self-redress. As between the primary units a system of collective self-redress arises which in turn yields to the authority of chief or council representing the larger community as a whole. As long as the vindication of rights rests mainly in the hands of the kindred or other group, responsibility is collective, intention is apt to be ignored and punishment is not assessed according to the merit of the individual. When retaliation is mitigated by the introduction of money payments no change in ethical principle occurs. It is only as social order evolves an independent organ for the adjustment of disputes and the prevention of crime, that the ethical idea becomes separated out from the conflicting passions which are its earlier husk, and step by step the individual is separated from his family, his intentions are taken into account, his formal rectitude or want of rectitude is thrown into the background by the essential justice of the case, appeals to magical processes are abandoned, and the law sets before itself the aim of discovering the facts and maintaining right or punishing wrong accordingly.

---

[1] The converse proposition that wicked acts are all treated as legal offences does not follow, nor is it true of the modern state. The questions as to the sphere of the state which arise here cannot be dealt with on this occasion.

Offences against the public order do not constitute an exception to the statement in the text. In themselves they are slight offences, and the penalty is always light, but the deliberate defiance of the public order is, of course, an immoral act unless justified by some bad end which that order may be made to serve.

The rise of public justice proper necessitates the gradual abandonment of the whole conception of the trial as a struggle between two parties, and substitutes the idea of ascertaining the actual truth in order that justice may be done. That is at first carried out by supernatural means, viz. by the Ordeal and the Oath. These in turn give way to a true judicial inquiry by evidence and rational proof. The transition occurred in England mainly during the thirteenth century, the turning point being marked by the prohibition of the Ordeal by Innocent III. in 1215. The early stages of public justice administered by the recently developed central power led to excessive barbarity in the discovery and punishment of crime. It took some more centuries to prove to the world that efficacy in these relations could be reconciled with humanity and a rational consideration of the best means of getting at truth. By so long and roundabout a process is a result, so simple and obvious to our minds, attained.

We have thus dealt briefly with the development of the state organization for the maintenance of rights and the suppression of wrong-doing. We have now to consider the development of the principal rights to be maintained. In a large measure these group themselves in accordance with the main divisions into which human beings fall—divisions of sex, of community, of class, and so forth—and these divisions will guide us in the chapters now to come. Nothing so intimately affects the standard of obligation or throws so much light on the manner in which rights and duties are conceived as the degree in which they are affected by such distinctions. These will accordingly form the subjects of the three following chapters. There will remain certain general obligations, principally those arising out of rights of property, which will require separate treatment.

CHAPTER IV

MARRIAGE AND THE POSITION OF WOMEN

1. The division of the sexes affects the standard of conduct in two ways. First, it gives rise to special relations, carrying with them special rights and duties. Secondly, it cuts every people into two portions, and the legal and ethical position of these two portions is never wholly the same. In greater or less degree the rights and the duties of men and women differ, and the divergence is not confined to matters arising directly from the sex relation itself. Important as these differences are for an understanding of ethical conceptions, they are themselves extremely difficult to ascertain and interpret. In no other department of ethics are the types of custom strewn in such disarray over the various stages of culture. Nowhere else is it so difficult to classify without bewildering ourselves by cross divisions. Nowhere else is a bald statement of the law so likely to mislead as to actual practice or living sentiment. For no other human relation is at once so personal, and so bound up by multitudinous threads with the forces and ideas, economic, religious and even political, which go to determine the structure of any society.

The position of woman is not wholly to be judged by her condition as wife and mother. Often the unmarried woman has important rights which marriage takes away; often also the married woman acquires a degree of freedom and dignity which her unmarried sister lacks. Nor, conversely, is the position of the wife the sole question of importance in the law of marriage. Nevertheless the two questions are too nearly allied for separate treatment, and in order to understand the position of women we must pass at once to a general consideration of the law and customs relating to marriage.

It will help us to begin by distinguishing the principal questions to be asked about the marriage customs of any society. Thus we may classify marriage—

(1) According to the number of parties to the union (monogamy, polygamy, etc.).

(2) According to the restrictions on marriage (exogamy and endogamy).

(3) According to its stability (law of divorce).

(4) By the methods of obtaining a husband or wife (*e. g.* capture, purchase, contract).

(5) By the relations between husband and wife (in the family).

The two last questions are closely related, and both have an important bearing on the general position of women. Under each head we shall see what are the principal forms of marriage customs that exist, and which are the prevalent types in the savage and barbaric world. We shall then briefly trace the history of marriage and of the position of women among civilized peoples.

2. I. We have to ask, first, in any community, who, or rather how many, are the possible parties to a marriage. Is it (*a*) a union of one man with one woman, or (*b*) of one man with two or more women, or (*c*) of two or more men with one woman, or (*d*) of a group of men with a group of women, or (*e*) is it wholly irregular, the negation of union, promiscuity? All these are types of marriage which exist or have existed, or at least have been alleged to exist. Further, they split up into sub-types. Polygyny, for example, the union of one man with two or more women, is found in the two fairly distinguishable types of polygamy proper, in which several women are alike wives, and concubinage, in which there is one chief and fully legitimate wife, and one or more in a subordinate and perhaps servile position.[1] The one type, moreover, shades off into the other by gradations according as the chief wife's position is more or less fully defined,[2] and as that of the secondary wives is more or less servile.

---

[1] In China there is only one chief wife. The others are secondary, but legitimate wives. The old Babylonian law recognizes one wife (allowing a second in case of her being invalided), with concubines who were to recognize the wife as mistress. The case of Leah and Rachel illustrates a family in which there were two legitimate wives as well as concubines. Mussulman law allows four legitimate wives and an indefinite number of concubines. The old Japanese law recognized polygamy with a head-wife (Post, i. 62; Kohler, *Z. f. V. R.*, vi. 369). For instances among uncivilized peoples, see Howard, i. 143–144, and Westermarck, p. 442, etc., and *Cambridge Anthropological Expedition to the Torres Straits*, p. 230. There are borderland cases in which marriage proper seems to be monogamous, though concubinage is tolerated, *e. g.* among the Bali monogamy is the only legal marriage, but concubinage with unmarried slave girls is practised (Hake, p. 379). In other cases polygamy is in disfavour. Among the Kayans of Borneo it is limited to chiefs, and even for them "public opinion does not easily condone a second wife" (Hose and McDougall, i. 73).

[2] In some cases a second wife may only be taken if the first is childless, *e. g.* among peoples of the Punjab and the Dekkan, the Santals in Bengal, some Bombay tribes (Post, *l. c.*). Post also refers to Bulgarian and Montenegrin customs.

Among the Malays, under the Semando form of marriage, the taking of a

Polyandry, again, though far less common than polygamy, has many varieties. The several husbands may, and in the commonest case do, form a definite group. Generally, as in the well-known case of Thibetan marriage, they are all brothers.[1] But this is not always so. Polyandry may merely take the form of permitting a woman to have many husbands without specifying any particular relationship between them except such as may follow indirectly from the other marriage regulations of the community. This is the case among the Nairs of the Malabar coast. The same people illustrate a still further variety, the combination of polyandry and polygamy. For as the Nair woman may have many husbands, so the Nair husband may have many wives.[2] Again, in the relations between the husbands there are differences quite parallel to those which distinguish polygamy from concubinage. All the husbands, that is, may have equal rights, or there may be one chief husband and others inferior and secondary to him. Of such a character is the secondary husband who assumes both the rights and the duties of the proper husband in his absence among the Aleuts.[3] Some peoples have the punishment—to our eyes the very paradoxical

---

second wife is a ground of divorce, and at Mokomoko the husband must pay her a fine, 40 gulden (Waitz, v. 145, 146). Among the Khonds the wife's consent is required (Reclus, *Primitive Folk*, p. 281). Post gives similar instances among the Khyengs, the Tamils of Ceylon, and Punjab peoples (Post, i. 63, from Kohler, *Z. f. V. R.*, vi. 192), and Howard (i. 144) quotes a case among the North American Indians. Among the Touaregs the taking of a second wife is a ground of divorce (Letourneau, *La Femme*, p. 308).

[1] Among the Todas the wife belongs to the elder brother, but the younger brothers also have rights over her as they grow up, and an extra lover is permitted as well (Reclus, p. 196). Polyandry is, however, disappearing except among the indigent. Among the Santals the husband's brother is admitted, but not too openly (Risley, ii. 229). According to Westermarck (p. 453) there are only three cases in Asia in which polyandry is not limited to brothers—viz. the Nairs, Khasias, and certain Cossacks, but Letourneau (*La Femme*, p. 216) denies that it is strictly limited to brothers in Thibet.

[2] Compare Cæsar's account of the ancient Britons: "Uxores habent deni duodenique inter se communes, et maxime fratres cum fratribus parentesque cum liberis; sed, si qui sunt ex his nati, eorum habentur liberi, a quibus primum virgines quæque deductæ sunt" (*B. G.*, v. 14). That is, there was a chief husband and the rest were secondary. Among the polyandrous tribes of primitive Arabia the wife, according to Strabo, passed the night with the elder brother, but the others had access to her (Starcke, p. 137). For the Nairs, see Reclus, 162.

[3] Reclus, pp. 66–67. Among the Thlinkeets and Koloshes a younger brother is preferred for this purpose. Secondary husbands occur among the Papuas (Kohler, *Z. f. V. R.*, 1900, p. 334). Among the Roucoyennes, the wife's lover enters the husband's household as a peito, something between a client and a serf (Coudreau, *Revue d'Ethnog.*, vii. 479).

punishment—for adultery that the paramour, on detection, is compelled to become a secondary husband and contribute to the maintenance of the family.[1]

3. Of group marriage, again, more than one variety is abstractly possible, though as here the evidence becomes scantier it is not so easy to say which types, if any, have been actually represented in history. Indeed, it cannot be regarded as certain that any such institution as the actual marriage of two groups, as distinct from a combination of polygamy and polyandry with certain marriage taboos, has ever existed. As the whole subject is involved in controversy, it will be well to summarize what is actually found in a leading case. Among the Central Australian tribes two types of marriage custom have been distinguished by Messrs. Spencer and Gillen. The first, which specially concerns us, is that practised among the Urabunna. The tribe is divided into two classes, and these classes are exogamous—that is to say, a man must not marry within his class, but must choose his wife from the other. Secondly, there are distinct totems within the tribe, and these are similarly exogamous. Thirdly, each of

---

[1] Among the Konyagas, if the paramour is a member of the husband's family the latter may compel him to obey his orders and those of the wife, with whom henceforth the association is legitimate (Reclus, p. 67). Altogether Westermarck enumerates some thirty-six instances of tribes practising polyandry (p. 450). Among over 500 peoples studied we found only twenty-two cases, occurring, however, in all the grades of the simpler culture. To these must be added the people of Langerote and Portaventura in the Canary Islands in the sixteenth century (Letourneau, p. 303), and in antiquity the Arabs and British (Westermarck, p. 454). The case of the primitive Aryans in India is doubtful. The two Aswins in the Rig Veda win one damsel as the prize of a chariot race, and she acknowledges their "husbandship." In the Mahabharata Draupadi is won by the eldest of five Pandava princes and becomes the wife of them all, but her father describes this as "an unlawful act, contrary to usage and the Vedas." The princes plead as precedent the case of a "most excellent moral woman," who dwelt with seven saints, and of Varski, who cohabited with ten brothers "whose souls had been purified with penance." Mayne (*Hindu Law and Usage*, p. 64) points out that these were bad precedents, being cases of saints who were above ordinary laws. He adds that in the Ramayana polyandry is mentioned with abhorrence, and sums up in favour of the view that sexual looseness rather than recognized polyandry is indicated (Mayne, p. 65, 4th ed.).

In Sparta a secondary husband was sometimes tolerated for the sake of increasing the family—*οἱ ἄνδρες (βούλονται) ἀδελφοὺς τοῖς παισὶ προσλαμβάνειν οἳ τοῦ μὲν γένους καὶ τῆς δυνάμεως κοινωνοῦσι, τῶν δὲ χρημάτων οὐκ ἀντιποιοῦνται* (Xenophon, *Rep. Lac.*, i. 9, quoted in Grote, Part II. chap. vi. p. 520). Similarly, among the Punans, a Borneo jungle people of very primitive type, wives of elderly men take a second husband to obtain children (Hose and McDougall, ii. 185), and among the Bayaka in Africa, a childless husband may introduce his brother in secret (Torday and Joyce, *J. A. I.*, xxxvi. 45).

the two classes is divided into four groups, and in choosing a wife a man is restricted to one of these groups. How the group division is arrived at need not concern us for the present. The point is merely that there exists for any given group of men a definite group of women with whom they may marry, and who are called their Nupas. So far, then, our result is that there are in the tribe a group of men and of women who are Nupa to each other—that is, potential husbands and wives. To come now to the actual marriage, a man will have one or more of his Nupas assigned to him as his wives. He will also have others to whom he is Piriaungaru—that is, he has access to them under certain conditions. Similarly, a woman may be Piriaungaru to several men, and lastly, a man may lend his wife to any of her Nupas, and on the occasion of a visit, for example, is expected as a matter of courtesy and good feeling to do so. Thus the husband has only, so to say, a preferential right in his wife, and the wife in the husband. The husband will have a secondary right to other women as his Piriaungaru, while his wives are in turn Piriaungaru to other men.[1]

---

[1] In the Dieri tribe there is both individual and group marriage. In the latter case the headman allots certain men and women (subject to the clan or totem restriction) to one another as Pirauru, but their rights, as the different husbands and wives are often members of different local groups, are exercised mainly when the groups meet. When they separate the right of the Noa or principal husband predominates (A. W. Howitt, *The Organization of Australian Tribes*, Transactions of Royal Society of Victoria, vol. i. Part II. pp. 124–147).

The custom of the Arunta and other Central Australian tribes is still further removed from a true group marriage, as here there are no Piriaungaru. A woman is restricted to one man unless he lends her. What suggests group marriage, apart from the nomenclature of relationships, is (1) that the name for wife is the group name Unawa, the term (corresponding to Nupa) applied to all women of the class with whom the man may lawfully marry; (2) that wives are freely lent within the group and enjoyed promiscuously at festivals. How much stress is to be laid on this is not easy to determine. It is certain that the class restrictions on marriage are held much more vital by most savages (whatever their marriage customs) than the marriage tie itself. Among the Australians, Messrs. Spencer and Gillen remark that jealousy is little developed, adultery is at most an infringement of rights of property (so also among North American Indians, see Waitz, iii. 131), wife-lending is habitual, and divorce is easy. Under these circumstances the very use of the term marriage can only be justified by the difficulty of finding any other. It is not marriage as we understand the relation, and the tie, whatever we call it, is exceedingly loose. On the other hand, the taboos which mark out special classes for each other are among the most sacred laws of the tribe. Generally speaking, these restrictions are of a negative character—a man must not marry within his totem, or his class, but sometimes, owing to the multiplication of restrictions, particularly in the form of classificatory relationships (of which the Australian class divisions are really a case), the result is to confine the intending spouse to a specific group. This group will then consist of

Now, as it stands, this scheme of marriage may be classified as a form of polyandry combined with polygamy, such as we have

---

his Nupa or Unawa, and so it is easy for him to change his wife within the group and impossible for him to take one outside it; and as this applies to all the men and all the women we may say that the two groups are more strictly bound together than any individuals within it, and this we may, if we please, term group marriage. But the expression is undesirable unless deliberately intended to suggest the theory of an earlier form in which men and women were actually united by groups.

The importance of this question lies in its association with the classificatory system of counting kinship. In name, an Australian has not one father, but a group of fathers, *i. e.* all the potential husbands of his mother; not one brother, but a group of brothers, *i. e.* all the sons of his potential fathers, and so on. This system of names is widely spread, and points to some form of social organization which must have been very prevalent, if not universal, at a low stage of human development. (That the system, or rather systems, for they are of many kinds, cannot be explained linguistically but must rest on definite social relations between definite individuals and groups, has been conclusively shown by Dr. Rivers in his *Kinship and Social Organization.*) Those who uphold group marriage argue (1) that this method of reckoning kinship is the only possible method where group marriage exists, (2) that no other satisfactory explanation of its origin and meaning has ever been put forward, (3) that we can understand its existence where individual marriage now prevails if we suppose group marriage to have existed previously. As to this argument it may be said (*a*) that the expression group marriage is misleading. At most we may contemplate marital relations as restricted to the members of two classes, and within the right class, rights of access verging upon communism. (*b*) There is no evidence, nor is it probable, that such limitations arise by restriction of a still more primitive communism. The more probable suggestion is that they are a modified form of exogamy (cp. Rivers, *op. cit.*, pp. 70, 71). Given the avoidance of the nearest kin in marriage, the very simplest society involves at least two intermarrying families, A and B. By our methods of reckoning kinship and permitting the intermarriage of any cousins, these two families would become intertwined, and would, in fact, form one kindred. But suppose descent reckoned through one parent, *e. g.* through the mother only, and marriage forbidden to all the maternal kin. Then the daughters of family A remain of the kindred A, and must marry the sons of B, and so it will be to the end of time. If other families, C and D, join the group, the young men and maidens will find favour in one another's eyes, and the old men will have to find a way of regularizing relations. If some forcible young man of moiety A has carried off a damsel of family C, it would legitimize the proceeding to rank the females of family C with moiety B for marriage purposes. Thus it might come about that moieties extend beyond recognizable kinship. Further, in the family group we often find that a particular cousin is the appropriate mate, *e. g.* the mother's brother's daughter. All mothers' brothers' daughters, in fact, form a class within which the bride should be sought by every one of the group of their fathers' sisters' sons. This is already a rudimentary class arrangement of marriage. Once again, suppose the group to be enlarged by the accession of a fresh family, and the young men to take wives among them. To regularize these marriages it will be necessary to rank these wives as of the same class as the cousins who were the appropriate partners for these young men. Then the same prohibitions and the same obligations will apply to parents of these brides as to parents of the bride originally designated.

already met with among the Nairs, only complicated by the taboos which limit the intercourse of the sexes to the two groups which are Nupa to each other. It is possible to explain the system as the relic of earlier customs where the two Nupa groups were actually married to each other, so that intercourse between them would be promiscuous. This, however, is an inference as to the probability of which others must determine. What we actually find is not this marriage of two groups, but exceedingly loose relations, polygamous and polyandrous, within the groups, combined with strict taboo outside them.

Where the marital relation becomes very loose we approach promiscuity, or the sheer negation of marriage, as between all who are not separated from each other by any taboo. If such taboos also fail, we get complete promiscuity. Does this exist? Dr. Westermarck[1] enumerates some thirty-one cases in which it has been alleged. But in the majority of these it is also denied by other authorities, and in several the allegation is known to be false. There remain a number of cases in which the marital relation is so loose that the husband sinks into the position of a lover, temporarily visiting the woman's house and readily dismissed at will. Sheer promiscuity is probably to be regarded rather as the extreme of looseness in the sexual relation than as a positive institution supported by social sanctions.[2]

We thus get a class of potential wives and husbands, who are not necessarily blood-cousins, but who would number blood-cousins among them. The parents of the potential wives would be potential parents-in-law and would enjoy the respect or exercise the rights of such. The restriction of marriage to the single class would be a consequence of the original rule of cousin marriage. It would be not a new restriction but an enlargement of the rule that a man should marry one of his mother's brother's daughters, by constituting a class standing in the relation of mothers' brothers' daughters to the class of the man himself.

Cases in which a man marries his wife's sisters, or possibly certain other relatives, along with her are partial developments of polygamy rather than group marriages, and the institution of the Omaha, quoted by Kohler (*Z. f. V. R.*, 1897, p. 320) as a case of group marriage, where a man marries the aunt or sister or niece of his wife, while on his death the widows pass to his brothers, is a combination of this form of polygamy with the levirate.

[1] Westermarck, pp. 52–55.

[2] The statement of Herodotus about the Massagetæ (Book I. chap. ccxvi.) and of Cosmas of Prague (eleventh century A.D.) about the ancient Bohemians are reducible to this. Cosmas writes, "Connubia erant communia. Nam more pecudum singulas ad noctes novos probant hymenæos, et surgente aurora . . . ferrea amoris rumpunt vincula" (Kovalevsky, *Modern Customs and Ancient Laws of Russia*, p. 10). Post gives as instances of peoples among whom "marriage relations are almost unrecognizable," tribes of California and the coast of Venezuela, aborigines of Brazil and some Peruvian tribes, six instances in Oceania, three in India, and four in Africa (*Ethn. Jurisprudenz*, i. 52). He adds further instances, making seven in all for Africa (*Afrik. Juris.*, p. 301). Among the Wintuns of California,

4. The looser types of marriage are almost, if not entirely, confined to savage and barbarous races. It is here, if anywhere, that we find promiscuity and group marriage. It is here, certainly, that we find the marital relationship so loose as to approach promiscuity and group marriage. It is here also that we find polyandry—a custom practised by no people with any pretension to civilization except the Thibetans and the ancient Spartans. Polygamy, on the other hand, while also very common among uncivilized peoples, may be said to dominate the middle civilizations, and monogamy the higher. But here we must distinguish. Polygamy may occur as a regular rule, limited only by the number of women available or by a man's means of maintaining them. Or it may be rare though quite permissible. Often it is limited to chiefs, nobles, or rich men, and in general, unless the numbers of the sexes are very unequal, the majority of men will be found at any time living with one wife. In asking, then, whether polygamy prevails among a people, we must decide whether we are inquiring into the permission of polygamy or into the actual extent to which it is practised. From the ethical point of view the former is the more important question, and it is clear that monogamy can only be said to be strict customary law when polygamy is not only rare, but definitely forbidden. With these distinctions in view we made three divisions—of peoples where monogamy is regular, those where polygamy is occasional (being either restricted to a class or allowed only on conditions,[1] or being in actual fact rare [2]), and those where it is general, *i. e.* unrestricted in principle and in practice frequent. We then find that the permission of polygamy—that is, the two cases of general and occasional polygamy combined, preponderate heavily in all the lower economic grades, but there are from 10 to

---

according to Powers, a man generally pays nothing for his wife, but merely "takes up with her." If (not being a headman) he takes a second wife, the two wives fight till one is driven out, while the husband looks on and abides in the lodge of the conqueror or follows the vanquished as he chooses (*Tribes of California*, p. 238). Can this relation be called marriage?

[1] *e. g.* among the Santals a second wife is only taken in case of sterility and with the first wife's consent (Risley, 616). Kohler states that polygamy is only allowed with the consent of the first wife among some Papuan tribes (*Z. f. V. R.*, 1900, p. 349).

[2] We make this entry, *e. g.* where we have statements such as the following: Polygamy permitted but not usual (Barea and Kunama—Munzinger, *Ostafrikansche Studien*, p. 524). The chief is referred to as having several wives, but no other information is given (Wafipa, Thompson, ii. 220). The men mostly have one wife (The Sereres at Fadiouth, cf. R. d'Ethn., ii. 15). Polygamy exceptional (Takue, Munzinger, p. 209). One wife is usual (Korwa, Crooke, iii. 324).

20 per cent. of cases in each grade where monogamy is the rule, with the exception of the Pastoral peoples, among whom we only found one case,[1] and of the Higher Hunters, where the proportion fell to 6 per cent. On the other hand, the practice of polygamy as measured by the number of instances which we class as "general" extends almost continuously from the lowest Hunters upwards.[2] This bears out the view that, as a *practice*, polygamy is mainly a matter of wealth. As an admitted custom, however, it may be said to be prevalent, though not universal, throughout the uncivilized world. The only definite group of cases in which monogamy as strict custom preponderates is that of the jungle peoples of Asia and some of the corresponding tribes of Africa. Thus the wild Semang are monogamous,[3] the Sakai perhaps so,[4] the Veddas[5] and Andamanese[6] strictly. The Punans are not monogamous since they admit polyandry, but hold to monogyny except in marriage with other tribes.[7] In Africa we hear the same of some of the Pigmy people.[8] The rule, however, is not universal. The majority of the African Pigmies would seem to have been polygamous or to have made little of marriage. The Kubus, even in the wild condition, are stated to have allowed polygamy, though, perhaps, rarely practising it,[9] and some of the Negritos practised concubinage. As far as we get any account rendered of the reason, it is economic. Thus, the Orang Bukit of Sungei Ujong have but one wife, but, according to Mr. F. W. Knocker, see no objection, except the difficulty of providing for them, to having two or three.[10] Similarly of the "tame" Semang, Messrs. Annandale and Robinson write that they usually practise monogamy for economic reasons.[11] Indeed, those of these peoples who have come under Malay influence and taken to a rude agriculture, have in many cases also accepted polygamy. In any case it would be a mistake to base any large conclusions on this partial tendency to monogamy. The forest tribes, though economically

---

[1] The Tobas, a South American hunting people, who have acquired cattle from the Spaniards.

[2] There is a drop in the lowest stage of agriculture, and the two pastoral stages are above the corresponding agricultural grades.

[3] Martin, p. 864. Martin, it should be said, denies that their monogamy is due to lack of passion and attributes it to self-restraint. Wilkinson, on the other hand, allows the Semang much less moral feeling.

[4] But cf. Skeat and Blagden, ii. p. 56.

[5] Seligmann, p. 87.

[6] E. G. Man, *J. A. I.*, xii. p. 135.

[7] Hose and McDougall, ii. 183.

[8] "The Batuas of Lake Tanganyika" (Hutereau, *Annales III*, i. 3), the "Wambuti of Ituri" (David, *Globus*, 1904, p. 196). On the other hand, Johnston finds conditioned polygamy, and a very frail tie verging upon promiscuity (*Grenfell and the Congo*, p. 674; *Uganda Protectorate*, p. 539).

[9] Hagen, p. 133.

[10] *J. A. I.*, xxxvii. 293.

[11] *J. A. I.*, xxxii. 417, etc.

very primitive, are formed, as may be seen, by a special and rather severe selection. They are the residue of those who have been driven further and further into the wilds by the pressure of stronger races or better organized communities, and their temperament and mode of life must be specially adapted to suit their particular circumstances, and as such is marked by gentleness, shyness, and timidity rather than by strength of passion. Possibly these causes have co-operated with the economic factor to secure among many of them a relatively favourable position for women, and, amongst other things, monogamous marriage. Amongst other Lower Hunters polygamy is permitted and the general position of women is unfavourable. This is true in general of the Australians, the Fuegians, the Bushmen, the Botocudos, and the Lower and Central Californian tribes, as well as of many other North and South American Indians, who are but little above the Lower Hunters in economic standing. We cannot associate any tendency to monogamy with the lowest culture, but only a partial tendency to monogyny (combined in an important group with the recognition of polyandry) in one particular development of that culture. In general terms, then, we may say that the permission of polygamy is the rule in all grades of the uncivilized world, but in so doing we must distinguish between polygamy as a permitted custom and as a general practice; and between an ethical monogamy based on the belief that it is wrong to have more than one wife, and an habitual monogamy based on the practical difficulty of obtaining and maintaining more than one wife.[1] Polyandry, on the other hand, is by comparison an exceptional practice, the principal causes of which are most probably poverty and a deficiency in the number of women. On the evidence before us it is hardly to be described as an institution belonging to one of the great types of social organization.

---

[1] Travellers and ethnologists sometimes describe people as monogamous who, in fact, are so only by prevailing habit. The Iroquois, for instance, always figure among monogamous peoples, and no doubt that form of marriage prevailed among them and became the strict rule. Thus, Morgan (*League of the Iroquois*, p. 324) states that polygamy was forbidden and never became a practice, but from Coldan's account given in Schoolcraft's work (i. 221), it appears that it existed, though rarely practised in his time. Repeatedly we hear that the mass of the people are monogamous, but that the chiefs or the wealthier tribesmen have several wives or concubines. This was the case with the ancient Germans. Polygamy was rare in practice but was legal. When, owing to general poverty and the equality of conditions—which would bar the making of exceptions in favour of rich men or chiefs—the practice of monogamy has become universal and as such is of long standing, it would harden into custom, and acquire the sanctity that custom possesses among simple peoples. As such we find it in all our grades except the pastoral, which, perhaps on account of the lowered industrial value, seems particularly conducive to a proprietary view of woman. Meanwhile, with the development of wealth, the practice of polygamy extends and prepares us for its importance in the lower and middle civilizations.

5. II. *Impediments to Marriage.*

A quite distinct classification of marriage systems could be made on the basis of the prohibitions which almost everywhere restrict, in greater or less degree, the choice of a husband or wife. These prohibitions exhibit a rich variety of differences, and their meaning and origin are extremely obscure. We have already noted that they fall into two great divisions. On the one hand, there are restrictions forbidding marriage within a certain group—laws of exogamy; on the other, and quite possibly among the same people, there are rules forbidding it outside a certain group—laws of endogamy. Both kinds of restriction appear in a great variety of forms. Thus, endogamy may take the form of prohibition to marry outside the clan, as in old days among the gypsies,[1] or the caste as in India, or even the family. In the ancient world foreigners could rarely intermarry unless their respective states had the *jus connubii*, and there were generally barriers on the intermarriage of slave or serf with free men or women, and a social, if not a legal, bar on the marriage of noble and commoner. In the modern world legal barriers have for the most part disappeared, and, socially speaking, equality in education alone is exacted.[2] Far more various and difficult to understand are the rules of exogamy. Marriage may be forbidden within the totem, as among many North American Indians and some Australian tribes; within the clan, as among the Bahima[3] and Somali,[4] etc.; within the village, as among the Battas[5]; or the tribe, as in Rotuma.[6] It may also be prohibited within the kindred, and here again great differences appear. All the kindred, so far as relationship is traceable, may be prohibited, as among the Andamanese and the Yoruba.[1] Or the prohibition may be applied to all the kin on that side to which the greater importance is attached, as in the Brahmanic and Chinese prohibitions.[2] Where relationships are of the "classificatory" type, *e. g.* where the mother and all her sisters are addressed by the same name, while the daughters of all that group of women, again, have one form of address in common, the prohibition of marriage may extend to all members of the group, and society will divide itself into classes within which a man may marry, and classes within which the women are strictly taboo to him. This class division of society runs through the Australian peoples.[3] Again, kinship may be reckoned by degrees, as among ourselves, and exogamy may be enjoined for certain degrees only, while beyond them marriage is permitted. In point of fact, under one rule or another, prohibition of marriage within the first and second degrees (parent and child, or brother and sister) is almost universal, if we take account only of the basis of relationship recognized by any given people. Thus, if the totem is exogamous, and passes by mother-right, all kindred through the mother will be excluded from marriage, but brother and sister by the same father will be no relations, and may intermarry. Indeed, if the principle is carried to its logical conclusion, the same will be true of father and daughter. On the other hand, the totemic prohibition may be eked out by a custom forbidding or discouraging the marriage of near relations as such. Thus, in New Britain we are told that though legally a man may marry his brother's daughter, since she is not of his totem, yet in point of fact such unions excite great repugnance.[4] Apart from cases in which kinship is only reckoned on one side, so that intermarriage is allowed within the half-blood, the permission of incest within the nearest degree appears very rare. Indeed, with this reservation we may say that the nearer the relationship (counting that of the son to his mother as closer than that of daughter to father), the rarer is the failure to prohibit.[1] Such failure probably occurs most often in consequence of a strongly endogamous tendency, in the form of a desire to maintain purity of blood. Hence we find cases of in-and-in breeding among royal families, *e.g.* in ancient Persia and Egypt, and among high castes, as the Ulitaos of Micronesia.[2] But the prohibitions may be carried far beyond the first and second degrees. The Roman Church still forbids marriage to third cousins, and the attempt was made to carry it much further. Again, affinity may or may not rank with relationship. In many cases a son inherits his father's wives, with the exception of his own mother, along with the rest of the family property. We find the Jewish legislators and, later, Mohammed, setting themselves against this practice. On the other side, rules of affinity may be construed as severely as those of blood relationship. On this method an immense extension of the forbidden degrees was effected by the mediæval church,[3] which was still further widened by the creation of a spiritual affinity between god-parents of the same child. The effect of this complex mass of prohibitions was such that hardly any marriage was clearly valid, while dispensations were and still are attainable allowing unions even between uncle and niece. Protestantism swept away this mass of prohibitions, and for the most part allowed marriage of first cousins, and confined the restrictions of affinity to the direct line.[4]

---

[1] Post, *Grundriss*, i. 33. See *ib.* for several instances in which it is the duty of relations to marry. I am not clear that it is distinctly forbidden to marry another than a relation.

[2] There are exceptions, such as the prohibition of marriage with negroes in twenty-two of the United States, with Indians in four states, with Mongolians in four states (*Parly. Papers, Miscell.*, No. 2, 1894, p. 155). Otherwise the intermarrying of royal families is the principal exception. In the German code the marriage of a high noble with a commoner involves certain disabilities (Westermarck, 373).

[3] Torday and Joyce, *J. A. I.*, xxxvii. p. 105.

[4] Post, *A. J.*, i. 383.

[5] Waitz, v. i. 186.

[6] Gardiner, *J. A. I.*, xxvii. 478. There appear to be sporadic cases of prohibition within the same caste, or the same religious division (see Post, *Grundriss*, i. 41).

---

[1] Man, *J. A. I.*, xii. 126. Ellis, *Yoruba-speaking Peoples*, p. 176. The Andamanese recognize adoption and affinity as bars, but, through want of records, fail to trace kinship beyond the third generation (Man, *J. A. I.*, xii. 127).

[2] See chap. ii. p. 52. If the clan is based on father-right, it will be seen that the prohibition to marry an agnate is, at least in theory, equivalent to prohibition of marriage within the clan. Identity of name, again, is taken as equivalent to common membership of a putative clan.

[3] Among fifty-three peoples examined by Tylor, who count relationship on the classificatory system, thirty-three are at present exogamous (*J. A. I.*, xviii. 264).

[4] Danks, *J. A. I.*, xviii. 283.

Of these very various rules it seems possible to say three things generally. The first is that they tend to bar marriage between people who are bound together by some other important relation. Thus the totem or the clan, which is exogamous, is also as a rule bound in a kind of brotherhood to mutual assistance. Secondly, the particular relation which is the commonest bar is that based on blood kinship. Thirdly, the violation of the rules of exogamy, whatever they are, is generally regarded with peculiar horror. It is often an object of public vengeance when no other crimes, except, perhaps, that of witchcraft, have been raised to that dignity, and in the civilized world the intensity of feeling which it excites in no way diminishes.

---

[1] The marriage of father and daughter, as well as that of brother and sister, is said to be allowed among the Aleuts (Reclus, 65). According to Post (*A. J.*, i. 382), there is no case in which incest with a mother is allowed in Africa, but among the Wanyoro, sister and even daughter marriage occur. Incest between parents and children is also found in some South American tribes (Starcke, *The Primitive Family*, 224. Cf. Schmidt, *Z. f. V. R.*, 1898, p. 304).

[2] Sister marriage was common in ancient Egypt (W. Max Müller, *Liebespoesie der alten Ægypten*, pp. 7–8, and Waitz, v. ii. 111). For other instances, see Westermarck, 290.

[3] See Huth, *Marriage of Near Kin*, 117. Huth (*op. cit.*, 120) instances the repudiation of Ingeburga of Denmark by Philip Augustus, on the ground that she belonged to a family which had previously intermarried with the family of Philip's first wife. It is fair to say that in this instance the Pope procured Ingeburga's restoration.

[4] The English prohibition of marriage with the wife's sister was the most conspicuous exception.

6. Notwithstanding the great variation in the forms which it takes, the exogamic impulse seems to perform certain functions which are fairly constant. Thus (1) it checks in-and-in breeding, barring intermarriage with near kin and often, in the lower races, within the narrow limits of the clan or village, which in their isolation would otherwise become entirely filled with people related to one another by a network of cousinship. What, precisely, are the physical disadvantages of in-and-in breeding or the advantages of crossing is, however, harder to say than is popularly supposed, and it is probable that this biological side of the matter is the least important of the functions served by exogamy.[1] But (2), as indicated above (chap. ii.), it has the important sociological function of binding distinct groups together. (3) A third function of more importance in the civilized world is of a distinctively ethical character. For us the prohibition of incest is the only form of exogamy which persists, and incest is a crime which affects us with a horror, of the kind we call instinctive, and which is certainly not weaker in civilized than in barbarous humanity. What is the meaning of this horror? It is too real and deeply rooted to be explained as a survival. It is not based on tradition and convention, for it is not felt in relation to many crimes which the laws forbid. Thus, among peoples who accept the law of the Roman Church, the marriage of cousins is forbidden, but frequently occurs. In our own country men may approve or condemn marriage with a deceased wife's sister, but any one who should put it on a par with incest with a blood-sister would be a very abnormally constituted person. Is the horror, then, of incest instinctive? The usual objections to this view are based on a misunderstanding of instinct. It is said that the horror is not universal, and that the objects to which it is directed differ widely in different peoples. But many instincts in the animal kingdom fail in universality and are modifiable in their application. And, as we have seen, what is instinctive or hereditary in human nature becomes more and more a feature of character, a tendency or disposition to feel or act which obtains its actual direction from

---

[1] See the evidence, especially that of Mr. G. H. Darwin, collected in Huth's *Marriage of Near Kin*, chap. viii.

experience, and especially from education and social tradition. So far as such tendencies are to be explained it must be by showing the function which they serve, and the physical or psychical mechanism on which they rest. The function which the horror of incest performs has been, in early stages, to bring and keep families together in society, and at all stages to maintain distinct, and therefore in healthy development, the deepest affections of mankind. As to its basis, it is quite possible that there is an element of physical repulsion at the core, but, apart from this, there are psychological factors on which contemporary investigations of character throw some light. A sentiment is regarded as a system of emotions and ideas clustering about some object, and organized on lines of its own. If two distinct sentiments, as the parental and the sexual, come to bear upon the same object there is a collision between them, and the repulsion is felt as an emotional stress. In society the normal sentiment would have the upper hand, and its repugnance for the abnormal would reinforce the emotion in the individual, and would add (in this case) the shame of bringing social disgrace on one of his own kin. But religious ideas or social arrangements, working on the repugnances between the parental and the sexual as a nucleus, might extend it to all cases which it classed with the parental, and the current association would be reflected under ordinary conditions in the individual consciousness. Thus, rules of exogamy will naturally vary in accordance with the basis of kinship and of such fictive kinship as that of the totem. But they will vary around the parental, and more particularly the maternal, relation as a centre. The relation of the child to its mother is the first strongly realized, and remains throughout history the most sacred of human relations. Hence it is that cases where breaches of that relation are tolerated are the rarest of all. We may take this relation as the starting point of the prohibitions, and then bear in mind that it is all in accordance with the ways of primitive thought to extend them to everything indirectly or remotely associated with the tabooed relation—*e. g.* to the mother's children, her relatives, all of her totem or her name. The father may come into the account independently through the recognition of paternity or through contact with the mother, and starting from the paternal relation the taboo may be extended in the same way. The eccentricities of exogamy, then, are explained as arising (1) from an unduly extended taboo, (2) from an insufficiently felt recognition of natural relations. These are the ordinary faults of excess and defect which characterize rude morality, and are, on the whole, removed as civilization advances.

Thus, in earlier customs we find rules of endogamy restricting marriage by clan or caste exclusiveness, and of exogamy restricting it by rules bearing an indirect or irregular relation to the natural feeling which we are led to conceive as their starting point. In more civilized ethics we find the first set of restrictions nearly annihilated, and the latter reduced to a simple expression of the permanent feelings from which we suppose them to emanate. In both directions the more civilized ethics tends to discard rules which hamper the free exercise of choice in accordance with normal human feeling.

7. III. *The Stability of the Marriage Relation.*

Not less important than the number of parties to the union is the permanence of the marriage tie, and on this basis it would be easy to make a classification cutting right across all others. In many of the lower races, as we have already seen, the dissolution of marriage is so easy and frequent that it becomes a question whether the term marriage is at all applicable. In other cases the marriage bond is as strictly regarded as in the Roman Church. Here, again, we cannot find a continuous and unbroken development in any single direction, but once more we can with tolerable accuracy lay down that certain tendencies predominate at given stages of culture. This will be clear if once again we begin by distinguishing the different possibilities, and then briefly indicate the stage of culture at which each is or has been most frequently realized.

Divorce may (1) be perfectly free to either party; (2) it may be free to both by mutual consent; (3) it may be absolutely at the will of the husband or (4) of the wife. Next, (5) it may be free to one party or both on obtaining the consent of the family, the clan, or a court; (6) it may be open to either party on certain conditions. These conditions are infinitely various, but we ought to distinguish, as cases differing in principle, (*a*) those in which the only condition is of the nature of a fine, usually taking the form of forfeiture of dowry or the restoration of the bride price, and (*b*) those in which the essential condition is some fault or defect in the other party to the marriage.[1] Further, (*c*) it may be open on the same conditions to man and wife, or (*d*) on different conditions. Very often, in fact, it is free to the husband and allowed under conditions to the wife. (7) It may be wholly forbidden, marriage being indissoluble. In this latter case a separation *a mensa et toro* is usually allowed, but sometimes this, too, is forbidden.

---

[1] Not infrequently divorce is free only when the marriage is childless. Thus, among the Natchez, it was at the will of the husband till a child was born, after which there was no divorce (Le Petit, in the *Jesuit Relations*, vol. lxviii. p. 143).

Marriage is indissoluble among the Andamans, some Papuans of New Guinea, at Watubela, at Lampong in Sumatra, among the Igorrotes and Italones of the Philippines, the Veddahs of Ceylon,[1] the Gês of Brazil,[2] and in the Romish Church.

Ordinarily, however, both in the civilized and uncivilized world marriage may be dissolved either at pleasure or under certain conditions. Among uncivilized peoples divorce is not infrequently free to either party. The man dismisses his wife without ceremony, or the discontented or injured woman leaves her husband's house without more ado and runs back to her own relations,[3] or they part by mutual agreement.[4] In the higher stages of barbarism and in primitive civilization the consolidation of the family under the growing power of the husband tends to make divorce rarer and more difficult. Sometimes it drops almost entirely out of use. Thus it was a Roman boast that, though divorce was not legally impossible, before the case of Sp. Carvilius Ruga in 231 B.C. no instance had been known since the foundation of the city. Sometimes, with less justice, the power of divorce is left to the husband and withheld from the wife. It may even remain entirely at the husband's pleasure to send back the chattel which he has bought. Thus the Hebrew who found anything unseemly in his wife merely gave her a writing of divorcement and had done with her. In other cases there was at least a pecuniary deterrent. The divorcing husband forfeited the dowry, or, if the fault was his, could not regain the bride price. He had to leave his wife all the gifts he had made to her, or, finally, if she had no such property of her own, he had to pay a definite sum. Again, if there were children, provision might be made for their maintenance, or the right of divorce itself might in this case be withdrawn.[5] Similarly, where the wife has the right of divorce, she may incur pecuniary forfeits, losing her dowry, or having to repay the bride price and return the presents made at or during marriage.

---

[1] I take the foregoing from Dr. Westermarck's list, p. 517. He quotes Wilken's opinion that the same held good of the Niasians and Bataks.

[2] von Martius, i. 290.

[3] Sometimes it is a condition that she returns the price paid for her, *e. g.* in Soulimana and frequently in Africa (Howard, i. 226). In other cases she leaves at will, *e. g.* among the Bakairi (von der Steinen, p. 332).

[4] This Post considers to be the rule under the clan organization of society (Post, *Grundriss*, ii. 117).

[5] *e. g.* according to Post (*A. J.*, i. 434), among the Moorish tribes of the Sahara and the Hottentots.

Such pecuniary penalties render marriage relatively stable; but a further step is taken when it is dissoluble only under assigned conditions. These, again, show extraordinary variations. The husband is generally able to divorce the wife for unfaithfulness, very often for sterility, and sometimes[1] because she bears no sons; often, too, for disobedience, bodily defects, or what are considered moral failings. The wife, again, often has the right of leaving the husband in case of neglect, desertion, impotence, or cruelty—more rarely in case of unfaithfulness. As a rule, the divorced husband may marry again, but it is not always that the divorced wife has this right, especially under the system of marriage by purchase. Sometimes she is wholly prohibited from marrying; sometimes she must refrain till she has the leave of her former lord and master.

The customs of savage and uncivilized peoples as to divorce vary in such wild profusion that it is very difficult to make any general statement with regard to them. It may, however, be said that, with the few exceptions mentioned, divorce is allowed; that it is generally free to the husband on easy terms, and very often also to the wife, or to the two parties by mutual agreement,[2] but is sometimes restricted to special cases, and that the development of the patriarchate, and particularly of marriage by purchase,[3] tended to increase the privileges of the husband as compared with those of the wife in this relation.[4]

---

[1] *e. g.* in Burmah (Post, *Grundriss*, ii. 114).

[2] In comparing the position of husband and wife, it must be borne in mind that divorce almost universally sets the husband free to marry again, while the wife, in a large number of cases, especially under marriage by purchase, is more or less narrowly restricted in this respect, so that, for her, divorce rather corresponds to what we call separation (Howard, *A History of Matrimonial Institutions*, i. 244, 245).

[3] Howard (i. 231) notes the influence of wife-purchase in this direction.

[4] *Divorce among Savages.*—Divorce is apparently either quite free or open on very easy terms to either party among many North American Indians (Columbians, Howard, i. 238; Iroquois, Schoolcraft-Drake, i. 221; Upper Californians and Innuit, Kohler, *Z. f. V. R.*, 1897, p. 368). Among the Yuroks divorce is very easily accomplished at the will of the husband (Powers, p. 56). In this last case the husband regains the bride price. It is free to both parties among the Eskimo of Point Barrow and of Behring Straits and Pawnees (Howard, i. 227, 228). Among other tribes it is at the pleasure of the husband; [so stated of the North American Indian generally (Schoolcraft, i. 171); of the Oregons (*ib.*, v. 654); of the Hupa (Powers, p. 85)—here the displeased husband gets back the bride price; of the Dakota (Howard, i. 232); and the Abipones (*ib.*). In the last case, however, it may lead to a feud]. Among other peoples the man must lose the bride price if he divorces without good cause (Thlinkeets, Kohler, *loc. cit.*). In some the wife can leave at pleasure. The Navajo women are said by Colonel Eaton (Schoolcraft, iv. 217) to leave their husbands on the slightest pretext. Among the Digger Indians the wife leaves the husband at pleasure (*ib.*, 223). Among the Cegiha the wife's

In order to classify the different customs as far as such great diversities allow, we bring under the head of Divorce at will cases

---

relations take her away if ill-treated (Howard, 228), and the Sioux and Dakota women leave their husbands for unfaithfulness or other causes. Among the Upper Californians the deserted husband demands the return of the bride price. In the later form of marriage among the Creeks the bond holds for a year only.

Among some tribes of tropical South America the power of the husband is more developed, and he can lend, give, prostitute, sell, or exchange his wife at pleasure (Schmidt, *loc. cit.*, 1898, p. 297). In Brazil, according to Anchieta (quoted in Howard, p. 228), the wife may leave at pleasure. So among the Moxos (*ib.*, 239). The Bonak, Guanan, and Guatamalan women have similar freedom (authorities cited by Howard, p. 239).

In Oceania divorce is generally easy, though there are one or two cases in which it appears to be unknown. In Polynesia divorce by mutual consent is lawful (Howard, p. 230). A Tongan husband divorces his wife by simply telling her to go (*ib.*, p. 231). In Micronesia divorce is at the man's pleasure, and the same is true of the Papuan peoples, among whom the woman, if she flies, must return the bride price, while the husband, if in earnest about it, can generally reclaim her from her relatives by the terrors of witchcraft (Kohler, *Z. f. V. R.*, 1900, p. 347). In the Torres Straits divorce appears to have been rare. Infidelity and sterility were the chief causes, but incompatibility of temper appears to have been recognized as sufficient (*Cambridge Expedition*, p. 246). Among some Australians, as the Euahlayi, the husband might send the wife back to her relations, and reclaim her child when old enough, while, if ill-treated, her relations might take her away (Mrs. Parker, p. 58). In the Boulia District a wife given to a man by the camp council could only be divorced with her consent (Roth, p. 181). In Western Victoria couples may separate by mutual consent, but the husband wishing to divorce his wife must obtain the consent of the chief men of his own and his wife's tribe. She may also complain of his unfaithfulness and get him sent away for two or three moons (Dawson, *Australian Aborigines*, quoted by Howard, pp. 229, 230).

In Africa divorce at the will of the husband is general (Post, *A. J.*, i. 433). The corresponding right of the wife is rarer, but not infrequent. Some sixteen cases are enumerated by Post (*Afrik. Jurisp.*, p. 436), but some of them are doubtful, or depend on special conditions. Among the Fantis, Foulahs, and Kaffirs (Post, *A. J.*, p. 438), and in Kordofan and Baka (Post, *A. J.*, p. 439), the neglect or ill-treatment of the wife are good grounds of divorce. Among the Bogos her third flight is taken as final (Post, *A. J.*, p. 437). In many tribes the wife can be divorced for sterility (Post, *A. J.*, p. 439), and among the Kimbundas the husband can be divorced for impotence (Post, *A. J.*, p. 441). Among the Mundombe divorce is rare, only occurring when, after two years, there is no child (Magyar, p. 23). Among the Mayombe it requires the consent of the wife's father (Overburgh, p. 254). In many cases compensation must be given by the party which dissolves the marriage, *e. g.* among the Foulahs and the Kaffirs for groundless repudiation. In Bornu the wife retains her dowry (Post, *A. J.*, pp. 442–443). Among the Banyars she receives a small sum and retains all the presents she has received (Post, *A. J.*, p. 442). Among the Basutos, unless guilty of an offence, she is entitled to support (Post, *A. J.*, p. 442). In Egypt she can also claim a certain provision, and in Abyssinia she can claim her dowry as well (Post, *A. J.*, p. 442). Among the Bogos she takes the household utensils with her, among the Barea and Kunama she has half the joint property, and in Morocco a sum awarded by the judge (Post, *A. J.*, pp. 442, 443). If the woman leaves the man, her family must return the bride price, and perhaps more. But the question of compensation is very naturally affected in which (1) either party is free to dissolve the union, or (2) are subject to no check except the necessity of repaying the bride

---

by the circumstances of the divorce. If the divorcing party has good grounds he or she pays less, or perhaps pays nothing. Thus, among the Kaffirs, Foulahs, Fantis, and in Kordofan the wife does not restore the bride price if she has good grounds for leaving her husband (Post, *A. J.*, p. 445). Among the Beni Amer, if it is the man who divorces, the woman's property is divided, the husband taking his weapons, and the wife the house and contents. If the woman divorces the man for ill-treatment or infidelity, she gets only one-third of the common stock; if impotence is the cause she gets half (Post, *A. J.*, p. 446).

Among the Yoruba (where father-right holds) the husband can divorce the wife and reclaim the bride price if she is unfaithful; otherwise he loses the price. If he neglects the wife, she summons a palaver of her relatives, and if he persists, she may leave him. If he is of inferior rank he is liable to be flogged by her relations (Ellis, *Yoruba Peoples*, p. 187). Under mother-right, where the woman is not bought out of her family, the children often follow the mother in case of divorce. But this is not always the case, and sometimes the circumstances of the divorce determine the children's future (Post, *A. J.*, p. 447).

No obstacle is offered to the re-marriage of the man, but under marriage by purchase the husband generally retains some control over the divorced wife. Among the Hottentots and Ashantis she cannot re-marry; among the Banguns, not in the same village; among the Kaffirs, only if she had good grounds for leaving her husband; among the Marea and the Habub, not till her husband declares her free. But in many cases (Post, *A. J.*, p. 450, enumerates eight) apparently after a certain interval she is free to re-marry.

On the whole, throughout Africa, marriage by purchase prevails, and the position of the wife is accordingly less favourable.

Among the Indian Hill tribes the variations are great. The Nair wife may not only dismiss any of her twelve husbands at pleasure, but may even let him be sold into slavery for debt (Reclus, *Primitive Folk*, p. 158). Often divorce is free to either party. Instances are the Todas, Bodo and Dhimals (but here an adulteress must refund the bride price), and the Karens. Among the Badagas the wife may leave if she pleases, but the husband retains the children. He is also free to divorce her (Reclus, *op. cit.*, p. 195). Among the Nagas there is a fine according to the cause of the divorce (Godden, *J. A. I.*, xxvi. 177). Among the Santals divorce is rare, but is permitted to either party on obtaining the consent of the husband's clan. Among the Khonds the wife may leave the husband on repaying the bride price. (In some tribes this privilege is restricted to the childless.) On the other hand, she can be divorced only for adultery or prolonged misconduct, and her consent is required if the husband wishes to take a concubine (Reclus, p. 280); and, a rare note in the savage world, infidelity on the part of the man is held dishonourable.

Among the peoples of Central Asia divorce appears to be open to the man at pleasure and to the woman for persistent ill-treatment (Ratzel, vol. iii. p. 342; Letourneau, *La Femme*, p. 210).

Among the Malays, divorce is greatly influenced by the form of marriage. In the Ambil Anak marriage the wife may divorce the husband. In the Djudjur marriage all the advantage is on his side, but she can generally escape from him if ill-treated. In the Semando form of marriage (see Waitz, v. 145) the taking of a second wife or concubine is a ground of divorce, and in one place (Mokomoko) this is the only form recognized (Waitz, v. 145, etc.). Among the Battaks of East Sumatra there is no one-sided divorce, except for attempt to murder, and mutual agreement is required (Howard, p. 229).

price, or (3) marriage may be dissolved by mutual consent. Next we put together those in which divorce is free to the husband though either denied to the wife or open to her only on conditions. Next are those in which it is open to the wife but not to the husband.[1] Then there are those in which it is conditioned in various ways, and, finally, those in which it is indissoluble. In upwards of 270 cases we found[2] the following percentage for each class—

Divorce by consent or at will of either party . .	·48
At will of husband	·23
At will of wife	·007
Conditioned	·24
Marriage indissoluble	·04

These proportions were pretty evenly distributed among the different grades, except the Higher Hunters, where the two first classes account for 86 per cent. of the whole. If we add these classes together in the above table as representing the unstable form of marriage, we see that they account for 71 per cent. of the whole, and as the lowest figure we get for any grade is ·625 in the Higher Pastoral, where the number of instances is very small, we seem justified in saying (1) that, roughly, in seven peoples out of ten, marriage in the uncivilized world can be dissolved at the will either of one partner or of both; (2) that this relation is roughly constant from the lowest to the highest economic grades within these limits. Thus, in the uncivilized world, the marital relation is more often than not a loose tie, undone with relative ease.

8. IV. Further light is thrown on the structure of the family by the methods of arranging a marriage. These may be grouped under the following heads—

a. Capture.
b. Consideration rendered for the bride.
c. Consent of the parties.

---

[1] We only found two cases under this head. Sometimes we are only told explicitly that the wife may leave, but we presume from the general account of the husband's position that his countervailing right is so clear as not to have needed statement (see, *e. g.* Latcham on the Araucanians, *J. A. I.*, xxxix. 359). Among the Irulas, however, Harkness states that divorce was mainly at the option of the wife (Thurston, *s. v.* Irulas, vol. ii. p. 379).

[2] *Simpler Peoples*, p. 164.

A few words may be said here of the general character of these methods, while their bearing upon the marriage relation will be further discussed in the following section.

a. Marriage by *capture* is a somewhat ambiguous term. The practice of taking women captives in war or in petty raids is widely diffused over the savage world. In the genuine and unadulterated form of carrying off a bride from a strange tribe against her will and that of her relations, it occurs, according to Professor Tyler, in some forty cases.[1] From this genuine capture Professor Tyler distinguishes connubial and formal capture. Connubial capture is not a mere form, but is a recognized method of obtaining a bride between families living at peace with one another, and is not regarded as a sufficient ground of quarrel. Of this Professor Tylor finds forty-six cases.[2] Finally, he enumerates forty-four cases in which the form of capture is retained without the reality as part of the wedding ceremony. One illustration will suffice: "Among the Bedouin of Sinai the bridegroom seizes the woman whom he has legally purchased, drags her into his father's tent, lifts her, violently struggling, upon his camel, holds her fast while he bears her away, and finally pulls her forcibly into his house, though her powerful resistance may be the occasion of serious wounds."[3] In other cases the resistance is less determined, and the form of capture is reduced to a mere symbolical act. The wide prevalence of these forms led McLennan and others to the belief that capture was originally universal; but this opinion is now abandoned. Capture, as we shall see further, is incompatible in principle with the widely-diffused primitive system of mother-right, and its existence as a form may be explained in many instances by the necessity of a symbolic act to express appropriation. The symbol, in fact, is not necessarily a survival of something more real, but may be rather a legal expression of the character of the act performed.

b. Consideration rendered.—The more ordinary method of obtaining a bride is in one way or another to pay for her. (1) In many cases the payment is a true purchase. Where this method is fully developed the unmarried girl is not her own mistress. She is one of the family; more, she is the property of the family or of the family's representative—the governing male, her father, brother, guardian, whoever he may be. She is an asset of a certain value to the family, the amount depending partly on her attractiveness, partly on her labour, partly on the scarcity of the article. This article can be sold for so much, and the purchaser naturally becomes wholly possessed of what he buys.[1]

---

[1] As an incident of savage warfare it is probably more frequent. A long list of instances of the practice is given in Howard, vol. i. p. 158. From Cape Horn to Hudson's Bay women are regarded as legitimate booty. The practice of capture prevails throughout Melanesia, has existed throughout Tasmania, New Zealand, Samoa, New Guinea, among the Fiji Islanders, the Indian Archipelago, and to a limited extent in Australia; it is found occasionally in Africa, and in various ancient nations.

[2] In 435 peoples of whose forms of marriage we obtained information, we found only forty-one cases in all of capture as a reality, and many of these were only "occasional" or partial cases (*Simpler Societies*, p. 154). But see previous note.

[3] Howard, i. 165 166.

(2) But in many instances the transaction is of a less commercial character and more fitting to the dignity of the bride. Gifts are made to the bride's parents, but they are regarded rather as compensation[2] for the loss of a member of their household than as a price by which the husband acquires the rights of an owner.[3]

(3) The gifts of the husband or his family may be balanced by return gifts, which may equal or even exceed the original gifts in value.[4] It is sometimes assumed that this exchange is a modification of purchase, and that it is through the increase of the return gift that the opposite practice of the dowry arises. It is equally possible that the exchange of presents arises independently in connection with marriage by free consent of the parties as a method of cementing the union of the two families. We may call this system one of the exchange of presents,[5] but in the concrete it is often hard to draw the line between it and the previous class, where such complimentary presents are often made in return. Wherever gifts of serious value are exchanged, it must be admitted that the whole proceeding bears something of the character of a commercial transaction, in which the girl,

---

[1] It should be noted, however, that the system may be greatly modified by the usage of assigning the price to the woman as her own property, as in Mohammedan countries (R. Smith, *Kinship*, etc., 2nd edition, p. 121. Cf. Cook, *Moses and Hammurabi*, p. 83).

[2] *e. g.* among the Bushongo we are told that a bride is not bought, but it is conceived just that compensation should be given for her. Her consent is necessary (Torday and Joyce, *Annales*, Serie III. p. 11).

[3] These gifts to the parents may coincide with the actual arrangement of the marriage by free courtship, as among the Omaha (Dorsey, *R. B. E.*, iii. 260).

[4] Among the Wambugwe the suitor sends the bride's father an ox, but he, if he agrees to the marriage, endows her with oxen, so that the dowry exceeds the bride price if it is to be so called (Baumann, *Massailand*, p. 187).

[5] Again, the present may be very trivial, *e. g.* among the Watatura it consists of a pot of honey (Baumann, *Massailand*, p. 172). We should regard this as merely a compliment.

so to say, is an item on one side of the account.[1] This is especially the case if it is clear that the bride's family get the more valuable presents.[2]

(4) Service.—Where the husband is not able to pay for the wife he sometimes receives her on credit, and in default of the possibility of payment may work out his debt in the form of service. This practice is familiar to us from the case of Jacob, and is found to this day in many parts of the world.[3] In this case the husband enters the wife's family for the period of his service, which, being concluded, he returns to his own people and sets up house on his own account. But while residing with his wife's relations the husband is rather a tolerated visitor than the lord and master of his own family. Indeed, he is but partially tolerated, for this residence in the wife's home is frequently associated with the taboo separating the husband from the wife's relations. They are bound to mutual avoidance because, as being generally members of separate totems or clans, they are in theory enemies. On the other hand, when the service is completed and Jacob has led Leah and Rachel to his own home, his authority is vindicated and he has whatever rights the custom of the tribe allows. The sustaining cause of this form of marriage appears to be principally economic. The man serves because he has not the property to buy a wife, and so we find marriage by service existing side by side with marriage by purchase.[4]

(5) Exchange.—By the side of the exchange of gifts, which we ought, on the whole, to rule out of the cases of "consideration,"

---

[1] In the Torres Straits, apparently the gifts are ultimately balanced by return presents, yet the transaction seems to retain a commercial character. The chief Maino told Dr. Haddon that he paid for his wife a camphor-wood chest with seven bolts of calico, one dozen shirts, one dozen singlets, one dozen trousers, one dozen handkerchiefs, two dozen tomahawks, one dozen hooks, two fish-lines, one long fish spear, one pound of tobacco, two pearl shells, and "by golly, he too dear!" (*Cambridge Expedition*, p. 231).

[2] *e. g.* among the Wambugwe (Baumann, *Massailand*, p. 187).

[3] In Africa among the Quoja, Fantis, Banyai, Edeyahs, and in Futatoro, also among the Zulus and Basuto. It is found in North America among the Aleuts and other Indian tribes; in South America among the Brazilians; and in the backward tribes of Asia among the Nagas of Assam, the Kookis, and among other hill tribes, also among the Tunguses, the Ainu, the Kamchadeles, and the aborigines of China; among the Dyaks and some of the Philippinos, and here and there in Oceania (Westermarck, *Human Marriage*, 390; and Post, *A. J.*, i. 378).

[4] Among the Yurok in California the purchase money might be only half paid, and the husband then would enter the wife's tent in a semi-servile position. This would only be accepted by "soft" fellows (Powers, p. 56). We find a similar half-marriage among the Hupa (Goddard, i. p. 56).

we have frequently a much less dignified transaction in which one girl is exchanged for another. Thus A, marrying B's sister, must give B his own sister in exchange. This is particularly common among the Australians, where it often provided a satisfactory conclusion to an elopement.[1]

c. Consent.—In all grades of culture the human factor has its say in the arrangement of marriage, and in some cases the agreement of the parties is sufficient to determine a union. Even where capture or purchase is developed, this factor cannot be wholly eliminated. A pair who are determined on having each other will settle all questions of right, in the savage as in the civilized world, by elopement. The actual influence of the woman's wishes is, of course, often a question of fact rather than of right. For example, all over Australia we find elopement a common method of arranging a marriage. The girl has perhaps been betrothed as an infant to a boy or even to a man who, when she is ready to marry, will be middle-aged. She dislikes him and goes off with a lover. Her relations and her lawful husband give chase. A fight ensues and she is more or less severely beaten. She is brought back and runs away again, and then is allowed her own way,[2] or there is a fight between her lover and her betrothed,[3] or perhaps the lover lets her relations throw spears at him or beat him on the head, and then is allowed to keep her, giving, it may be, a sister in exchange.[4] Possibly, if the couple stayed away for a year or two till a child was born, nothing at all would be done to them.[5] In all these cases abduction is illicit, yet it is extremely common, and the punishment tends to resolve itself into formal expiation. In other parts of the world we hear of elopements as being the less honourable form of marriage, propriety requiring that the matter should be settled by the parents.[6] Such a view is not unknown to civilized mankind. Not infrequently there is child betrothal, yet a grown-up girl may exercise choice.[1] Marriage may be by purchase, and yet the girl's inclination is not forced.[2] Thus the question of consent is no simple one.[3] Grouping as far as possible the cases in which consent seemed in principle to be required and those in which it might often be a factor but in principle was not required,[4] we found 103 cases of the former and 81½ of the latter, and we found that the proportion in which consent was ignored was highest among the Hunting and Pastoral people, and materially lower in Agricultural societies. In this respect the position of women improves, so far as our evidence goes, in passing from the hunting to the agricultural state, but undergoes a reaction in the pastoral.

---

[1] Thus, at Encounter Bay, marriage by barter of female relatives was the regular custom (W. Meyer, in Woods, p. 190). In Gippsland, sisters were exchanged (Bulmer, *ap.* Brough Smyth, i. 84). A girl who eloped might be severely handled by her brothers, because they lost thereby the means of gaining a wife for one of themselves (*e. g.* among the Wakelbura, Howitt, p. 222). This partly explains the compensation allowed even in case of unlawful marriage among the Euahlayi (Mrs. Parker, p. 79; see above, chap. iii. p. 90).

[2] *e. g.* in N. S. Wales (Fraser, p. 90).

[3] As among the Yerkla-mining (Howitt, p. 258).

[4] As among the Wotjobaluk (Howitt, p. 246). Among the Waimbiio the matter was settled by the lover letting all her male relations knock him on the head (Bulmer, *K. and K.*, App. I.).

[5] So among the Yuin (Howitt, 263).

[6] *e. g.* among the Omaha (Dorsey, *op. cit.*, p. 242).

---

[1] *e. g.* among the Garo (Dalton, p. 64), the Basonge Meno (*Annales*, Series III. Tome 2. pp. 271, 272), and the Tshi (Ellis, pp. 282, 285).

[2] As it would seem among the Santals (Dalton, p. 215), and the Munda Kols—if the gifts in this case amounted to purchase (Selinghaus, *Z. f. Ethn.*, iii. 326), etc.

[3] Often the most opposite customs occur in the same tribe, *e. g.* capture, purchase and choice by the woman among the Digger Indians (Schoolcraft, iv. 223), and this is merely what the facts of human nature would lead us to anticipate. Elopement and a peculiar form of child betrothal co-exist among the Central Australians, and by way of exception they also have marriage by capture (Spencer and Gillen, p. 104). In the Marquesas Islands, Letourneau remarks that the parents' objections are often overcome by the pair decamping together (*La Femme*, p. 106). This is a remedy known to the civilized world as well, but it proves nothing as to law or custom. Matters are more strictly defined among the Oregon Indians, where marriage is by purchase, and if, as will happen, a runaway match occurs, the woman is looked down on as a prostitute (Schoolcraft, v. 655).

In many cases child betrothal co-exists with the right of choice by the grown-up woman. Thus, among the Yoruba, according to Captain A. B. Ellis (*The Yoruba-speaking Peoples*, pp. 183–185), there is child betrothal, but a woman cannot be forced into marriage though she may be prevented from it. Among the Ainu, Batchelor (p. 141) notes child betrothal as an occasional practice now extinct, marriage going now in the main by the consent of the parties.

Post (*Afrik. Jurisp.*, i. 364 and 371), who notes eight cases in Africa where the bride's consent is required, remarks that practically the consent of the guardians is also necessary, but information is scanty. The Yoruba, quoted above, would be a case in point.

The means of securing consent are often sufficiently savage; *e. g.* according to Post (*loc. cit.*, p. 363), the reluctant Hottentot maiden must pass a night with the lover and become his wife if he succeeds in ravishing her. Among the Mandingos the girl has the option of remaining unmarried, and if ever given to another, her first lover may make her his slave.

A variant to the ordinary case of the disposal of a girl by her parents occurs when a man acquires a right to a woman by his position. This appears under the Levirate and also in cases like that of the Oregon Indians, where marrying an eldest daughter entitles a man to all her sisters, even if one of them be already the wife of another (Schoolcraft, v. 654).

[4] A difficult case to classify is that of the Gonds, where elopement is a recognized right, but a deserted lover may carry a girl off by force (Crooke, vol. ii. p. 434). On the balance we enter this on the negative side.

In a list of 435 tribes of whose form of marriage we have some information, we find 301½ cases clear or probable in which a consideration is given for the bride. We have 41 cases of capture, 18½ of the exchange of presents, 30 in which consent of the parties is the only factor mentioned, 51½ in which all we have learnt is that the relations arrange the marriage, and 11 in which we hear only of some intervention on the part of the chief or the old men of the community.[1] In the last two cases we may assume that our information is incomplete, and probably the same would be true of many of the 30 instances in which consent is the only point specified. Most of the cases in which relatives arrange the marriage would probably involve some consideration. We shall be within the mark if we say that in three cases out of four marriage is arranged by that method. But the proportion increases as we ascend the scale, rising from ·46 of all cases among the Lower Hunters to ·81 among the Higher Agriculturists and ·88 among the Higher Pastoral. Still more marked is the increase of Purchase, of which we have 219 cases in all, or just about half of the total, but a proportion of ·1 only among the Lower Hunters, and of ·69 in the Higher Agriculture. The development in the Pastoral peoples is again more marked, there being 16 clear and one probable case out of 20 in the higher grade. Thus "consideration" in general, and purchase in particular, are modes of obtaining a wife which begin in the lowest grade and increase, as might be expected, with the economic development, being especially common in pastoral society.

9. V. *Relations of husband and wife.*

In the structure of the family three main types may be designated. In the first the natural family, by which I mean husband, wife and children, is not complete; husband and wife are not united in the sense in which they become legally and morally one flesh in the higher forms of marriage. This form of marriage, of course, corresponds to the maternal clan system. In the second form of marriage the natural family is complete, and the husband is the head; but it is completed at the cost of the greater subjection of the wife, who, in passing into the husband's family, merges her personality in his, often almost like a slave.

---

[1] The figures exceed the total of 435 because most of the cases of capture overlap others. The fractions express partial instances, and those where there is some element of doubt.

In the third form of marriage the union of the family is maintained by the closest moral bond, but the full legal and moral personality of the wife, as well as of the husband, is preserved. This third form of marriage must be regarded as a type or as an ideal rather than as an actuality.[1] To achieve it is a problem which civilization has yet to solve, since the solution involves a certain reconciliation of contradictories; and if we wish to recognize any types of marriage as belonging to this class we must exercise a little liberality and admit all such as make a *bona fide* effort towards the solution. These efforts belong, in the main, to the story of civilized marriage. We have first to consider the two lower forms, which together dominate the uncivilized world. In the early stages of historical investigation into the beginnings of civilization it was thought that society arose out of the patriarchal family, and that in Abraham, Isaac and Jacob, or again in the Roman *paterfamilias*, as we reconstruct him from the laws of the XII Tables and what we know of earlier Roman law, we have a type of primitive human government. The researches of Bachofen, McLennan, Morgan, and others opened up an entirely new field of speculation. It was shown that the lower we go in the scale of civilization the more prevalent we find a type of organization which is in many ways the opposite of patriarchal, putting the mother for many purposes into the father's position. Amongst civilized nations which have passed out of this stage we find indubitable traces of their having gone through it at an earlier period. These observations led to the setting up of a matriarchal, as opposed to the patriarchal theory, and to the belief that in the dim red dawn of man there was a golden age of woman, which later on passed into the iron age of male despotism. The facts were sound, but the inference drawn from them was precarious, for it was not sufficiently recognized that there was a distinction between *matriarchy*, the rule of the mother, and what I have spoken of already as *mother-right*, rights going through the mother and dependent on the mother. What is really common among the simpler peoples, is not matriarchy, but mother-right, and along with mother-right, and where it most flourishes, it is perfectly possible for the position of women to be as low as the greatest misogynist could desire. The actual number of cases in which the woman has a controlling or even an equal position are very few. I will mention one or two of them later on. As a general rule, where the father is not head of the household that place is taken by the wife's brother, and the maternally organized clan consists of units composed each of a woman, her brothers, and her children. The woman is not necessarily any better off because she is ruled by a brother in place of a husband.

---

[1] I do not add the religious conception of marriage (as a sacrament) as a fourth type, because the religious (or magical) conception is present at each stage as a basis or framework for law or custom rather than as an independent form of the marriage relation. At the same time, these religious conceptions, particularly under Christianity, have deeply affected the actual contents of the law, and in relation to the permanence of the union may be said to have constituted a special type.

Let us set the two types of family in contrast. Under mother-right the wife, under father-right the husband, is the pivot on which the family relationships turn. Under mother-right the wife remains a member of her own family. Under father-right she passes out of her family altogether, she is even separated from the family cult and family gods, her husband's people are her people and his gods her gods. Under mother-right the husband goes to live with the wife's people, the children take the mother's name and belong to her kindred. In cases of divorce they follow the mother. It is the mother's family which protects them. Her brother is their natural guardian, and exercises all the rights and duties which may belong to that position. The maternal kinsfolk stand together in the blood feud, they and not the husband protect or avenge the wife and her children. They may even protect her and them from the husband himself. In extreme cases the children are not held to be related to their father or to their father's family at all, whence in some peoples, half-brother and half-sister may intermarry, as in the well-known case of Abraham and Sarah.[1] Under father-right, on the contrary, it is relationship through the male which counts. The father is the natural guardian and protector of the children and in case of divorce retains them. It is to him and his kin that wife and children look for protection. In extreme cases it is only such relationship that is regarded. The wife and her children cease to have claims on her family, while relationship to the male ancestors and descendants is traced to the remotest degrees. These consequences of the strict principle of father-right, however, are seldom pushed to the full length. Relationship through the mother is generally a bar to marriage, though the degrees are not carried so far as upon the masculine side;[1] nor is the wife often so cut off from her relations as the strict consequences of the paternal theory might lead us to expect. Her family, as a rule, retains a right of protecting her if she is ill-treated; she will fly to them for succour, and their right to guard her is recognized.[2] Lastly, under mother-right the property passes through the woman, if not to the woman. Under father-right it goes from father to son.

---

[1] Similarly, among the Spartans, children of the same mother might marry, but not those of the same father. The Samoyedes had a similar rule (Post, ii. 60). But these logical consequences are by no means always pressed. The actual facts of kinship have their weight. Thus, to take a single instance, in New Britain a man may legally marry his brother's daughter, but in practice is restrained by the general feeling of repugnance to such unions (Danks, *J. A. I.*, xviii. 283).

10. Social institutions are rarely developed with logical precision, and if we ask how far mother-right has actually prevailed in the world we find at once that we have to deal with fragments which, if conjoined, would make up the coherent type thus summarily depicted, but which, in fact, often exist apart, bereft of the consequences that seem in logic to belong to them. To take only one point, the system of kinship may be matrilineal, but marriage may be patrilocal. Then, though the children belong by blood to the mother and the mother's kin, they live in the father's household and among his kindred.[3] Sometimes the association with the wife's people is temporary, the newly married couple living with his people for a year or two and then setting up for themselves.[4] Sometimes, on the contrary, it is the association of the children with their father that is the provisional arrangement, and when they grow up they go to their mother's village.[5] Differences in this matter must affect the actual life of the family quite as closely as the theoretic

---

[1] Thus, a Hindu must not marry within the seventh degree on the father's, or the fifth on the mother's side (Mayne, *Hindu Law*, p. 87, 4th ed.). Manu makes a deeper distinction: "a damsel who is neither a Sapinda on the mother's side nor belongs to the same family on the father's side is recommended to twice-born men" (Manu, iii. 5). Sapindas are relations whose common ancestor if a male, is not more than six, if a female not more than four degrees, removed from either of them. Manu thus insists on complete exogamy to the male line, while forbidding the female kin only to certain degrees.

In Roman law the prætors early began to recognize the full right of blood (cognatio) as against the strict agnatio of the patriarchate (Maine, *Ancient Law*, p. 151).

[2] Cf. Vinogradoff, *Growth of the Manor*, pp. 11, 12 (the Celts); 136 (the Germans).

[3] Thus, in Australia, though the marriage class of the child is often determined by that of the mother, both mother and child seem in general to belong to the father's local group. Exceptions are the Maryborough and some North Western tribes.

[4] *e. g.* among the Hottentots, *Z. f. V. R.*, xv. p. 343.

[5] *e. g.* among the Tsimshian, Thlinkeet, Haida, and Heiltsuk (Boaz, *B. A.*, 1888, p. 237).

basis of kinship. Thus, in the cases instanced it is impossible to say either that "mother-right" or father-right prevails. Both principles are at work. Not only so, but in a number of cases we find both methods of reckoning kinship in use, whether because a transition is in progress or because different methods of marriage subsist side by side.

Thus, if we would seek to ascertain the extent to which mother-right prevails, we must break up the conception, and take certain definite elements singly or in combination. Among the simpler societies we find both methods of reckoning descent in almost equal numbers, eighty-seven and a half matrilineal and eighty-four patrilineal, the matrilineal being in the majority among the Hunters and the patrilineal among the Pastoral people. A better indication is given by ranking together as "maternal" cases in which only matrilineal descent is reckoned, and cases in which marriage is regularly matrilocal; as "paternal" the opposite pair of cases; and as "intermixed" cases in which both forms of descent or of marriage obtained, and cases in which matrilineal descent is combined with patrilocal marriage or conversely.

Omitting these last and grouping Hunting, Pastoral and Agricultural together, we get the following results—[1]

	Maternal.	*Paternal.*
Hunters	37½	18
Pastoral	1	10
Agriculture	44	47

In all Indo-Germanic peoples, among Semites and Mongolians, in a word, among all the races who have developed the historic civilizations, father-right predominates. Thus, broadly, when we contrast the civilized with the uncivilized world, we find mother-right confined to the latter, and within it we find it relatively most frequent in the lower cultures. We find instances of it in all parts of the world, and we frequently find among "paternal" peoples traces which point to an earlier system of mother-right. It would be too much to infer from these that the maternal family system is a phase through which all societies have passed, but it is a probable conclusion that matrilineal kinship, with a greater or less development of the rights and customs associated with it, is a form of organization suited to the lower phases of culture, while the paternal family predominates in the succeeding grade of civilization.

---

[1] For further details, cf. *Simpler Peoples*, p. 152.

There are two conditions to which the rise of the paternal family may be referred. The first of these is the recognition of paternity, the second is the rise of certain forms of marriage involving the appropriation of a woman by her husband. As to the first point, paradoxical and almost incredible as it may appear to us, there are cases in which primitive men find a difficulty in understanding that a man is responsible for the birth of a child, and attribute it to the action of a spirit or an inanimate object.[1] We should not build too much on exceptional cases, but it is worth remarking that the transition to father-right is in some instances associated with the curious custom of the couvade, which, however it is to be understood, is clearly a recognition of the relation of the father to the new-born son. The essence of the couvade is that the father has to take certain precautions at the time of birth. Whatever the precise meaning of these precautions—whether they are to protect the father, a portion of whose soul is passing into the child, or the child in whom the soul is finding a new lodgment—they represent a recognition of paternity, and apparently recognition in a crude and early form in which it is conceived as a passage of the father's soul into the child's body. Now, among the Melanesians, there are islands where mother-right prevails, but the husband has begun to assert himself, taking the wife to his father's house or to his own, if he has one ready, where he remains undoubted master. Here there is a mild couvade, the father refraining from exertion, and from certain foods. But in the South-Eastern Solomon group, where father-right is more developed, the couvade is also more conspicuous.[2] So, again, in quite another part of the world, among the South Americans, we find it just at the turning point where mother-right passes into father-right. Where the position of the father has long been recognized and is thoroughly established, the custom disappears. Its flourishing time is at the period when the one system is beginning to give way to the other.[3]

The recognition of paternity, however, is not a necessary condition of patrilineal kinship. It is sufficient that a man should appropriate his wife and her children with her.[1] This he clearly does not do so long as she remains in her own family, retaining her property as a member of that family and having her children in turn reckoned as members of it. But there are two processes known to primitive man by which a man can make a woman his own property and transfer her to his own family, viz. the methods of marriage described as capture or "consideration." Professor Tylor justly points out that the practice of capture must tend to break up the whole system of mother-right. When the woman is carried off from her own clan to her husband's house the physical facts conflict with any custom or law regarding her and her children as still belonging to her family rather than to his. Hence, out of forty cases of genuine or "hostile" capture, Professor Tylor finds that six only occur in the maternal stage. Of "connubial" capture he places twenty-one instances in the stage of transition from the maternal to the paternal system, and twenty-five in the paternal system proper. There are no instances under pure mother-right. Finally, he enumerates forty-four cases in which the form of capture is retained without the reality as part of the wedding ceremony. Of these he finds no instances under mother-right, but twenty-one in the transitional stage and twenty-three under the paternal system.[2]

---

[1] This is the theory of the Central Australians (Spencer and Gillen, i. 265 and ii. 330). Some Melanesians hold that paternity is due to a cocoanut, bread-fruit, or something similar (Codrington, *J. A. I.*, xviii. 310).

[2] Codrington, *J. A. I.*, xviii. 309–311. Cf. Kohler, *Z. f. V. R.*, 1900, p. 355, on the couvade in Papuan custom.

[3] Schmidt, *Z. f. V. R.*, 1898, 297. "Sie (*i. e.* the customs connected with the couvade) werden sich also am ausgeprägtesten gerade während jene Uebergangszeit zeigen wo das eine Princip (*i. e.* Vater-recht) das Andere abzulösen beginnt."

Now though, as we have seen, there is no reason to think that capture was ever universal or that it was the original form of marriage, it is beyond doubt one very primitive way of compassing that type of marriage which involves ownership of the woman, and it is quite intelligible that in a tribe where mother-right prevailed those men who by their own bow and spear could obtain women from a neighbouring clan should treat those women as their own property, and so establish a working model of the patriarchate. It is also readily credible that the new type should be more popular than the old—at any rate among the men—and that they should seek to extend it to cases in which the wife belonged to their own clan, and so establish universal father-right. But to lay down that this was the actual process by which father-right came to prevail would be to go far beyond our evidence. There is no proof that all patriarchal societies have gone through the stage of marriage by capture, and its frequent appearance as a form is not conclusive.

---

[1] *e. g.* in some Central Australian tribes, though paternity is not understood, the son follows the father's totem. It is sufficient that the husband is owner of the mother (Spencer and Gillen, II. 145, 175).

[2] Tylor, *J. A. I.*, xviii. 259.

The explanation may be that some form was necessary to assert definite ownership, and that the natural form of asserting definite ownership was the form of capture.

The alternative and in reality commoner method of appropriating a wife is that of purchase, or quasi-purchase, and the fact of purchase is closely associated with the whole position of women in cases where the patriarchate is strongly developed. We are moving here in a region permeated with ideas of slavery, the ownership of one human being by another, permeated also by the idea of a family as a unit to which each member belongs as a limb. The bride purchased from her own family passes out of it and into that of her husband.[1] Where the consequences are pressed to their furthest extent her family lose the power of protecting her, and the wife is at the mercy of her husband as to life and limb. He may dispose of her at pleasure, he may sell her, give her away, or lend her; and she has no right of redress against him.[2] At best she may escape from him if her family return her price and buy her back. Also, there is nothing in this order of ideas to prevent the husband buying as many women as he wishes. This extreme form must not be taken as the normal case. Natural feeling, after all, has its way everywhere in the world, affection and the sense of kinship survive the technical exclusion from the family, and so we more often find that by a kind of compromise the wife's relations retain certain powers of protecting her. Her murder would in many cases excite the blood feud, and if she runs away from her husband, and can satisfy her relations that she had good cause in his ill-treatment, they will in many instances stand by her and give her protection.[3] Still, her position, even in such cases, is rather that of a protected dependent than of a free woman. Slavery is still slavery though the position of the slave may be mitigated by law, and such mitigation is in reality no rare occurrence even for the actual slave at the level of civilization which we are considering.[1]

---

[1] It must not be assumed that marriage by purchase always implies father-right. Under mother-right a man may pay a bride price for the usufruct of a woman (*e. g.* among the Papuas, Kohler, *Z. f. V. R.*, 1900, pp. 347, 348). But it is easy to see that out-and-out purchase goes naturally with, and may be said logically to necessitate a thoroughgoing paternal system (see above, p. 154, and below, p. 168).

[2] Post (i. 171) instances former customs among Parthians and Armenians, the Gypsies, Tscherkessen, Maravis of South Africa, and ancient Germans, and quotes Cæsar on the Gauls : " Viri in uxores sicuti in liberos vitæ necisque habent potestatem." Among some South American Indians the father can lend, sell, or exchange the wife (Schmidt, *loc. cit.*, p. 298). The right of the husband to kill the wife taken in adultery is general—Post, (i. 172) says " gänzlich universell," but this is an overstatement.

[3] See above, p. 162. Among the Somali and in the Gaboon the husband who kills his wife must pay a fine to her family (Post, *Afrik. Jurisp.* p. 62). This, I suppose, is a composition for blood vengeance. So, too,

The appropriation of the wife consolidates the family and tends to the integration of the clan, but at the cost of a more or less complete subordination of the wife. Hence the position of the woman seems, if anything, to change for the worse as social organization advances. This deterioration, however, is perhaps less severe than appears at first sight.

---

among the Kaffirs (*ib.*, p. 401). The husband has to pay the blood price to the wife's family if she dies in giving birth to a child; *a fortiori* we may suppose that if he deliberately killed her, the same penalty would be imposed. Among the Ainu, Batchelor (*The Ainu of Japan*, p. 138) notes a change. Formerly the head of a family had absolute powers to divorce, disinherit or punish. Now little can be done without consulting neighbours. Among the Australians the wife was sometimes protected by her relations. Thus in N.-W. Central Queensland, if her husband killed her, he had to give up a sister to her relations, which may or may not have acted as a deterrent. But in addition the woman had always her "tribal" brothers to protect her (Roth, *op. cit.* 141). Among the Kurnai there were cases in which the relatives would seek to avenge a wife whom her husband had killed (Fison and Howitt, *K. and K.*, p. 206). In New South Wales, on the other hand, Fraser found that the wife was the property of the husband, who might kill her without challenge from social or tribal laws (*op. cit.*, p. 27). Among the Mandingos the wife is protected by the judge (Post, *Afrik. Jurisp.*, p. 402). Among the Yoruba by her family (Ellis, *op. cit.*, 187). Among the Malays, in the "djudjur" marriage the wife passes by purchase into the husband's family, yet the wife's parents can interfere to protect her in case of cruel treatment (Waitz, v. 144.) According to Dr. Westermarck ("Position of Women in Early Civilization," *Sociological Papers*, p. 155), "there are peoples among whom the husband's authority is almost nil, although he has had to pay for his wife." But no instances are given, and I imagine them to be rare. In *Simpler Societies* we have noted eighty-two cases in which the husband has the right of chastisement and twenty-nine in which the wife is protected either by her kindred or the law, but in eight of these the protection only qualifies an admitted right of chastisement, and it is very possible that with further information we should find the same thing to be true in several of the remaining instances. The figures, however, are too small to admit of confident generalization. An interesting trace of the feeling that it is the duty of a wife's relations to avenge her is found in the *Alcestis*, vv. 731–733, where Admetus' father threatens him with the vengeance of Alcestis' brother, though Alcestis has chosen voluntarily to die on Admetus' behalf—

> *δίκας τε δώσεις σοῖσι κηδεσταῖς ἔτι.*
> *ἦ τ'ἄρ' Ἄκαστος οὐκέτ' ἔστ' ἐν ἀνδράσιν*
> *εἰ μή σ'ἀδελφῆς αἷμα τιμωρήσεται.*

Naturally, however, the right of protection by her relations is more effective when the wife is still regarded as a member of their family (Post, i. 173).

[1] For instances, see Post, i. 171–177.

11. *The Position of Women in Early Society.*

Favourable as the position of woman under mother-right appears on the surface, the truth is that it is no bar whatever to complete legal subjection. Among the Caribs, where descent goes through the female only, the women were nevertheless in an inferior position. The husband alone had the right of divorce, and he could exercise it at will, the only effect of mother-right being that in case of divorce the wife would retain the children. Among the North American Indians generally, notwithstanding the tendency to mother-right, the position of women is, on the whole, admitted to be low.[1] In Melanesia, where there is strict mother-right, the mother is in no way head of the family. The family house is the father's, the garden is his, the rule and government are his.[2] In Oceania generally, where mother-right is common, the two sexes are in large measure separated in their lives through the complex mass of taboos which prohibit their intercourse.[3] The head of the maternal family may have the same despotic power as the patriarch—thus, among the Barea and Kunama, he has the power of life and death; among the Bangala, the Kimbunda, and on the Loango coast the right of selling any member of the family; and in general, under the maternal as under the paternal system, the head is a male.[4]

Apart from the general tendency to overlook the masculine headship of the maternal family, and so confuse mother-right and matriarchy, mistaken views have arisen from the identification of marriage by service with the subordination of the husband to the wife. The man who cannot buy a wife becomes a servant to her family, but not to her. Jacob did not serve Rachel, but Laban, and when the term of service was complete both Leah and Rachel remark that they have now passed out of their father's family. They identify themselves with Jacob, and Rachel steals Laban's household gods on his behalf. At the same time, marriage by service does fairly illustrate some of the conditions which modify the relation of husband and wife, and may even affect the question whether mother- or father-right is to prevail. The man serves because he has not the property wherewith to buy him a wife, and so we not infrequently find that the two kinds of marriage subsist side by side. Thus, among some Californian tribes, purchase is the rule, but if a man can only pay half the bride price he enters the wife's house in a servile position.[1] Similarly, among the Micronesians of Mariana the husband must serve if he has not wealth enough to support the wife. The best instance may be drawn from the Malay Archipelago, where the two opposed types of marriage are found fully developed with special names. In one, *Ambil anak*, the husband is purchased by the wife's family; he enters it, as a rule, in a dependent position, the children all belong to the mother's family, and the wife has the right of divorce. In the other form, *Djudjur*, the husband or the husband's family has to purchase the wife; she becomes his property, the children are his, and he has the right of divorce. Her parents only retain a certain right of intervention in case of cruel treatment.[2] In such cases, at least, it is clear that the relations of husband and wife are determined not by any prevalent custom or opinion prescribing what such relations ought to be, but by the actual success or failure of the man in finding means whereby to appropriate a woman to himself.[3] Thus the difference between the maternal and paternal systems does not turn on divergencies of principle as to the rights of women, nor does the superior position of the wife's family necessarily imply any similar superiority in the wife herself. No doubt under mother-right the woman derives some advantages from her position, such as the retention of her children in case of divorce, but the cases in which it has given her real equality or superiority prove, on examination, to be very rare. Among the Nairs, who are sometimes quoted in this connection, and who, as has been mentioned, combine polygamy and polyandry, the woman chooses her husband and brings him to her house. Possessions pass from mother to daughter. The woman may divorce her husband, or rather any of her husbands, at pleasure. Often a brother and sister set up house together, the tie between them being held closer than that between husband and wife, and if in such a case the wife goes to live with a husband she will be subject to the sister. It follows also that the child is attached to the uncle rather than the father. In such an organization the family, as we understand it, is, of course, completely broken up, and there is no doubt that the position of the woman makes her in a way the centre of the whole organization. There is equally no doubt that in this case she acquires from this position a considerable authority. But we are also told that, although she inherits the property, her brother or maternal uncle administers it, and, again, it is administered rather on behalf of the whole group of kinsfolk—that is to say, as collective property—than as belonging to any individual owner, so that, after all, we are not very far removed from the normal state of things under mother-right, where the woman is subject to her brothers instead of to her husband.

---

[1] See Waitz, iii. 101, 382; Catlin, *N. A. Indians*, i. 23 and 226. Ratzel puts it that the position of the women is not in all cases one of oppression (ii. 128).

[2] Codrington, *J. A. I.*, xviii. 309. Dr. Westermarck, who, on the whole, takes a favourable view of the position of women among savages, declines to attribute any influence in this direction to mother-right (*Sociological Papers*, p. 157; *Moral Ideas*, 655–657). Herein he is opposed to Steinmetz, and to Ratzel (see, *e. g.* Ratzel, *The History of Mankind*, ii. 334). The argument that (*e. g.* among the Australians) the position of women is not sensibly affected by the system of descent is not very forcible, since the importance of the family is so small, as compared with that of the local group and its divisions, that the mode of reckoning descent naturally counts for little.

[3] In some instances, however, the position of women is, or has been, favourable in Oceania, *e. g.* in Micronesia, and in New Zealand (Ratzel, i. 273–274, and Waitz, iii. 101).

[4] Post, *Grundriss*, i. 134–136. Post notes that there are exceptions.

---

[1] Kohler, *Z. f. V. R.*, 1897, p. 383.

[2] Waitz, v. i. 144 ff. Cf. Marsden, *History of Sumatra*, p. 220, etc., cited in Spencer's *Descriptive Sociology*.

[3] We may note in this connection that among civilized peoples which have completely developed the patriarchal system, and perhaps even passed beyond its extreme phases, there is a tendency to the subjugation of the husband, in cases where women are allowed control of their own property, if the wife is the wealthy one. I am not speaking from the point of view of the humorist or the novelist, but of the lawyer. Thus, few peoples have pushed the right of the father to a more extreme point than the Japanese in the Far East, or the ancient Romans in the west. Yet among the Romans, when women acquired by the *Lex Julia* complete control over their dowry, the result was that the husband frequently passed into practical subjugation to a rich wife. In Japan it is astonishing to find the recrudescence of the primitive custom of the husband coming to live with the wife, and taking her name in the case where the eldest daughter inherits an estate, or where the bride's father supplies the house. From instances like these, drawn from cases where the patriarchate had its most extreme development, we can understand the full strength of the economic factor in determining marital relations, and we may draw the

Somewhat similar cases may be cited from among the North American Indians. Here the women had occasionally a certain measure of political importance; for example, they might be represented by a spokesman, either male or female, at the men's council, and they sometimes originated warlike expeditions with the object of replacing, by a raid and the capture of a prisoner, the loss of a warrior of the clan. To them, also, as we shall see later on, was referred in many cases the fate of the prisoners taken. They decided whether prisoners should be tortured or adopted, and, moreover, took a special part, with a

---

inference that where in the uncivilized world we find the husband passing into the wife's family, even in an inferior position, it does not follow that any favourable inference is to be drawn as to the prevalence of an ethical conception of women's rights.

peculiar zest, in the execution of the tortures when a decision was taken in that direction.

Among the Iroquois, where we have some of the most detailed accounts, we are told that the women occupied a dominant position in the Long House where the joint family lived. "Usually the female portion ruled the house, and were doubtless clannish enough about it. Stores were in common, and woe to the luckless husband or lover who was too shiftless to do his share of the providing. No matter how many children or whatever goods he might have in the house, he might at any time be ordered to take up his blanket and budge. . . . The house would be too hot for him, and unless saved by the intercession of some aunt or grandmother, he must retreat to his own clan, or, as was often done, go and start a matrimonial alliance in some other."[1] The women, says Morgan, were the great power in the clans. They could "knock off the horns" of a chief, and of certain chiefs they had the nomination.[2] Yet even among the Iroquois we do not find that the position of women was altogether good. On the contrary, they did all the drudgery of house and field. They were socially separate from the man, and the conquered Delaware were named women as a term of reproach, and compelled to forego arms as a mark of contempt.[3] Of the North American Indians generally, Waitz[4] makes a remark which goes to the root of the matter, that though property passed by the women they seem to have had little or none of their own. There remain a few scattered cases in which the wife—not merely the wife's family—is said to enjoy superiority or even authority. Among the Kocchs of Bengal it is stated by Dalton that the husband goes to live in the wife's clan, and that his property passes to her daughters only; and not only this, but he has to obey his wife, and what is, perhaps, more extreme, her mother as well.[5] Among some of the forest nomads in Asia the position of women is good, *e.g.* among the Veddas, women seem to be equal with men in all respects (Seligmann, p. 8), and we find a few scattered cases in all the economic grades of the lower cultures in which the woman is said to be on an equal footing with the man. Other cases in which a higher position is attributed to the wife either depend on her superior social or economic position or on the failure of the husband to pay her price.[1] They do not indicate that the position of the woman is, as such, equal or superior to that of the man.

---

[1] From a letter by the Rev. A. Wright, a missionary among the Senecas, written in 1873, and given in Morgan's *Houses and Houselife of the American Aborigines*, p. 65. It is worth noting that Mr. Wright appears to be describing a past state rather than that which he actually saw.

[2] In all the economic grades we find a few instances in which women could take a part in government, either being admitted to councils or being able to act as chiefs. In one case, the Wyandot, the women elected and formed the gentile council, which chose a man as chief (Powell, *Wyandot Government*, *R. B. E.*, vol. i. p. 61).

[3] Schoolcraft-Drake, i. 277, 388. Morgan, *League of the Iroquois*, 323.

[4] Waitz, iii. 129.

[5] Dalton, p. 91. Letourneau, *La Femme*, p. 175.

A handful of exceptions such as these, however interesting as disproving sweeping generalizations, do not alter the fact that in the great majority of uncivilized peoples the position of woman is in greater or less degree inferior to that of man in point of personal rights.[2] Apart from a sufficiently frequent inferiority in her right to property or to the mere protection of life and limb, apart from the fact that the drudgery of life so often falls on her while the men hunt or fight,[1] the prevalence of the capture, purchase and exchange of wives testifies strongly in this direction. The common facility of divorce, even where the conditions are equal to the two parties, tells against the woman, who is the more interested of the two in the permanence of the tie. And very often the conditions are not equal, but favourable to the man. The general permission of polygamy points in the same direction. Lastly, the woman's person is not, strictly speaking, her own property, but that of her husband or guardian, and it is in this sense in many cases that chastity and respect for women are understood in the savage and barbaric world. This peculiarity makes itself felt in many directions. In the first place, wife lending is a not uncommon

---

[1] Among upwards of 500 peoples of whom we have obtained some information as to marriage and the position of women, we have entered seventeen (probable cases reckoned as a half) in which the wife's position is clearly made out to be equal to that of the husband. In one or two rare cases the law of divorce favours the wife. For instance, among the Khonds of Orissa she may leave her husband on repaying her price, but may only be divorced for adultery or misconduct. (Dr. Westermarck states that constancy is not required from the wife, and that the husband may be punished for adultery. *Sociol. Papers*, p. 152.) The husband may not strike the wife taken in adultery—a very exceptional rule (Reclus, p. 281). These liberties appear to be connected with a scarcity of wives, and with the relics of polyandry (Reclus, *ib.*). Post, *A. J.*, 400, considers that the position of the wife among the Sarae is equal to that of the husband, and even superior among the Beni Amer and the Galla. But among the last-named he adds that if the husband has once brought home the trophies of a departed enemy, he becomes absolute master. According to Hahn (quoted by Westermarck, *op. cit.*, p. 154), the Khoikhoi (Hottentot) wife is mistress within the house, but according to Kohler (*Z. f. V. R.*, 1902, pt. iii. 344, 355—speaking of the Hottentots generally), though the wife has a fairly independent position, the husband has the right to chastise her in moderation.

[2] Dr. Westermarck, who objects to the term "subjection" as a general description of the position of women in the lower races, writes: "Among many of them the married woman, although in the power of the husband, is known to enjoy a remarkable degree of independence, to be treated by him with great consideration, and to exercise no small influence upon him. In several cases she is even stated to be his equal, and in a few his superior" (*Soc. Papers*, p. 151). Admitting this to be the case, we shall clearly be right in persisting that in the great majority of cases women's legal position is inferior. It may be added that considerate treatment is a totally different thing from equality of rights. In his new work on *The Origin and Development of the Moral Ideas*, Dr. Westermarck gives a long list of cases in which the wife's position is more or less favoured. But in comparatively few of them is equality of *rights* asserted, and in still fewer superiority. Even where equal rights are mentioned, the statements, with two or three exceptions, lack precision. Dr. Westermarck himself says: "All these statements certainly do not imply that the husband has no recognized power over his wife, but they prove that his power is by no means unlimited. It is true that many of our authorities speak *rather of liberties that the woman takes herself than of privileges granted her by custom*; but, as we have

---

seen before, customary rights are always more or less influenced by habitual practice" (p. 646, the italics are mine). The distinction here admitted cuts deeper than Dr. Westermarck seems to admit. In a relationship so personal and subtle as that between men and women, *de facto* influence and power may develop to the highest pitch, without in the least affecting the recognized rights or status of the sex. A favourite of the harem may sway an empire and yet remain a slave. The frequent statement of travellers that the wife rules the household, or that the husband does nothing without consulting her, might have been made of this country in the days when the legal position of the wife was most abject. The power to influence and recognized ethical equality are not only different, but have no necessary tendency to pass into one another.

[1] The extent to which women fill the place of slaves in the rudest societies has perhaps been exaggerated by some writers. Dr. Westermarck (*Sociol. Papers*, p. 150) points out that for the men to fight while the women toil is a natural division of labour in a world where fighting is a frequent necessity. But this, though it explains, hardly alters the fact that an occupation recognized as inferior falls to the women (cf. Westermarck, *Moral Ideas*, pp. 633–637). There are many variations, and it would be easy to multiply quotations on either side, but on the whole it seems clear that the more toilsome and least esteemed work tends to fall on the women. See the general statements in Ratzel, as to Oceania, vol. i. p. 273; the Malay Region, *ib.*, p. 441; North America, ii. 129; the Arctic races, p. 225; the Negroes, p. 334; Kaffirs, pp. 432, 433; and the Mongols, iii. 341. The position in the two first-named regions is the most favourable, particularly among the more developed peoples. In the *Simpler Peoples* (p. 170) we have tabled eighty-six cases in which the harder work falls to the women, and twenty-seven in which it may be regarded as fairly apportioned. They were pretty evenly distributed among the various economic grades. The evidence, naturally, is often difficult to weigh, and many peoples have been left unentered for this reason; *e. g.* among the Karaya peoples, Ehrenreich (*op. cit.*, p. 27) says that certain forms of labour fall on the woman, but that she is no beast of burden and the man also has his duties. Here we can make no entry. Similarly when im Thurn (*op. cit.*, p. 215) says that in British Guiana work is pretty equal, but women really do the more continuous drudgery, we do not think the statement decisive enough for entry under either head.

custom among savages. The husband who would kill or mutilate the wife whom he discovered in clandestine intercourse with a lover will also lend her as a matter of courtesy to a guest.[1] In the one case she infringes his right of property, in the other case it is as his property that she is acting.[2] She is not, in our modern phrase, a person with the full rights of self-respect and respect from others attaching to personality. Secondly, where the obligations of marriage are binding the rules for the unmarried are often very lax. One exception to this laxity is constituted by the system of child betrothal, whereby the unwedded girl is already the husband's property,[3] and another by the demand for virginity in the bride which, under marriage by purchase, it is accordingly the interest of her guardian to secure.[4] Thirdly, the claim to fidelity is usually one-sided.

---

[1] Numerous instances are given by Starcke (p. 122) and Westermarck (pp. 73, 74). The custom is pretty general among the North American Indians (Waitz, iii. 111. He excepts only the Sioux and the Chippeway). Cf. Schoolcraft, v. 684. Post (*Afrik. Jurisp.*, i. 471, 472) gives numerous instances in Africa. Waitz (v. ii. 105) attributes the practice to the Micronesians generally. We found forty-one instances in our authorities, twenty-seven from hunting peoples.

[2] In the Torres Straits any irregular intercourse was called "stealing a woman," and there seems to have been no word for fornication or adultery apart from (*puru*) theft (*Cambridge Expedition*, 275).

[3] Where the young girls are guarded, precautions are sometimes pushed to disagreeable lengths, as in New Britain, where, between eight and ten, they are put into cages and kept there till they are married.

[4] Post, i. 21–23. When the husband expects virginity at the time of marriage, unchastity may become a breach of the proprietary rights of the guardian. Hence it is often punishable, especially if it results in pregnancy. Thus, among the Takue, the Marea and the Beni Amer, the seducer who makes an unmarried girl pregnant excites the blood feud, and among the Bogos the full blood price is demanded in such a case (Post, *Afrik. Jurisp.*, i. 61 and 70). Among the Wanyamwesi the lover must marry the pregnant girl under penalty of a fine (Post, *A. J.*, i. 458), and in Unyoro she is taken to his house, and, by a characteristic piece of primitive reasoning, he must pay for her if she dies, while if she lives she returns to her father unless the lover pays the bride price. (For other instances in Africa, see Post, *ib.*, 459, ii. 70, and cf. Letourneau, *La Femme*, p. 48.)

In the previous editions I took the view that prenuptial unchastity is normally disregarded in the simpler cultures, and that its enforcement depended almost exclusively on child betrothal or on marriage by purchase. But a more extended study of the evidence has convinced me that this is an error. It need hardly be said that the evidence in this matter is often very difficult to assess. Relations may be winked at while an open scandal is subject for censure or punishment. We should not treat these as cases of condonation, *e. g.* where, as among the Bhuiyars (Crooke, ii. 87), we are told that unmarried girls are free, but that a lover, if detected, is fined and forced to marry, we regard this as a prohibition; on the other hand, where relations are generally tolerated, and, in case of pregnancy, marriage or compensation to the relatives is at the option of the man, we think the case falls on the other side of the line (see Risley on the

While any offence on the wife's part exposes her to punishment, and while an outraged husband may lawfully avenge himself on the man who has trespassed on his property, the unfaithfulness

---

Lepchas, vol. ii. p. 8 and Wehrli, *I. A. E.*, xvi. 28, on some of the Singpho peoples). Bearing these difficulties in mind, the following results must be taken for what they are worth.

(1) We have found fifty-six and a half cases (probable ones reckoned at a half) of the condemnation and sixty-seven and a half of the condonation of prenuptial unchastity. This, considering the uncertainty of the evidence, is a balance on the unfavourable side on which no stress can be laid. But among the hunting peoples, particularly in Australia, there are several cases in which, though there is no mention of prenuptial relations as a general rule, the marriage procedure involves the submission of the girl to a number of men—*e. g.* among the Wotjobaluk, all the young men of the totem would have the right (Howitt, p. 246). In this connection, *i. e.* as bearing on the regard or disregard for the woman's person, these cases should be reckoned with those in which prenuptial relations are condoned, and this weights the scale more heavily among the Lower Hunters. Bringing these cases into relation with instances of wife-lending as of cognate character, it appears that in this respect the Hunting tribes stand materially below the Agricultural, while these, again, are clearly below the Pastoral. But there is no more detailed correlation with the economic advance, for, in fact, the lowest Agricultural stage comes out materially better than the two higher stages.

(2) To test the effect of marriage by "consideration," and in particular by purchase, on prenuptial chastity, we compared the proportion of cases in which it was condemned or condoned (*a*) in cases where consideration is known to be given with all cases, (*b*) in cases of purchase with all cases. The results show no advantage to marriage by consideration, and but a small one to marriage by purchase (cf. *Simpler Peoples*, p. 168). Our figures cannot yield certainty, because we are not fully informed of the basis of marriage in all cases, but, so far as they go, they favour the independent origin of prenuptial chastity. The attitude of the family is probably tightened up by the custom of purchase, but no more.

In some instances, the unchastity of an unmarried woman is regarded as bringing a curse or some misfortune on the family or the tribe. Thus the Aleuts fear that the whale would punish them if their wives were unfaithful in their absence, or if their sisters were unchaste before marriage (Reclus, p. 52). Similarly in Loango, the unchastity of a girl is held to bring a curse on the country (Westermarck, p. 61), and a similar idea seems to underlie the punishment of a pregnant maiden on the Gold Coast, where she is chased by the women to the sea, covered with dirt and ducked, after which she receives charms from the fetishman (Post, *A. J.*, i. 460). Apparently this is not so much by way of punishment as to avert evil. As to the man, he, of course, may be punished, often with death, for the infringement of the rights of the family. We may find the germ of a different conception in the belief that the unchastity of a man under certain conditions will cause misfortune. Thus the Aleuts above quoted believe that the whale will punish them, not only if their wives are unfaithful, but if they are unfaithful, while on a fishing expedition, to their wives. It is a widely-diffused belief among the North American Indians that unchastity on the war path would bring defeat, and hence captive women are generally spared. For the rare cases in which a husband incurs penalties to his wife for unfaithfulness see next note.

of the husband to the wife is but seldom regarded as an offence.[1] Finally, it is often open to fathers to devote their daughters to prostitution. This is not infrequently a religious duty, and in many cases there are recurring religious festivals of which promiscuous intercourse is a feature.[2]

12. All the world over certain forces, ethical, political, economic and perhaps religious, act from either side upon the relations of men and women. On the whole, apart from a sufficiently strong development of the ethical factors, those which fight for the man, as physically the stronger, have the upper hand. But when there are always forces tending the other way, favourable circumstances will occur here and there to give them peculiar

---

[1] Authorities give one instance to the contrary among African peoples, viz. in Great Bassam. Here the husband pays a fine to the wife if unfaithful to her while she is with the prince (Post, *Afrik. Jurisp.*, ii. 72).

Among the Hottentots the husband as well as the wife may be flogged for adultery, and except for ill-treatment there is no divorce without the consent of the council. But these observations refer to Christianized tribes (Kohler, *Das Recht der Hottentotten*, *Z. f. V. R.*, 1902, pp. 344 and 354).

Among the Mariana the husband could kill an adulteress, but if he on his side were unfaithful, he would be set upon and would be glad to escape with a whole skin (Waitz, v., ii. 106).

The Sioux and Santal (Dakota) women are said to beat their husbands for unfaithfulness (Howard, i. 239).

According to Dr. Westermarck, among the Shans of Burmah the wife may divorce the husband for drinking or other misconduct, retaining the common property (Westermarck, *Sociol. Papers*, p. 154). But Col. Woodthorpe (*J. A. I.*, xxvi. 21) states that the Shans of the Upper Mekong follow the law of Manu as to divorce, *i. e.* the wife has no powers of divorce at all. In W. Victoria, as mentioned above (Howard, i. 229), a wife may get a slight punishment inflicted on an unfaithful husband, and in some Queensland tribes the women take advantage of the initiation ceremonies to punish men who have ill-treated them (Westermarck, *Sociol. Papers*, p. 148). The case of the Khonds has been mentioned above, p. 171, note 1.

As mentioned above, Powers states (p. 22) that among the Karoks of California cohabitation even with a female slave is considered disgraceful. Two or three more similar instances are found among the North American Indians.

We could prolong the above list if we were to add cases in which bringing a second wife or a concubine into the house is a ground of divorce. Broadly speaking, however, in the savage world, under mother-right or father-right, the husband is master of the wife's person. Apart from the injury to the wife, adultery has a more public aspect as a frequent source of vengeance. Hence it is not infrequently a subject of public punishment. We have noted forty-eight such cases, the proportion increasing in the higher Agricultural stages with the general development of public justice (*Simpler Peoples*, p. 166).

[2] For instance in Africa, see Post (*Afrik. Juris.*, p. 465). In several Australian tribes the women are common at the corroboree, except to their fathers, brothers or sons by blood (Spencer and Gillen, p. 97).

strength. For example, the circumstances attending marriage by service, especially when we compare it with marriage by purchase or capture, have shown us how much the relations of husband and wife are determined by what, in the modern world, we should call the economic factor. The savage woman's price—if by price we mean the difficulty of appropriating her—may be high or low. Where it is always possible to organize a raid and carry her off it is decidedly low, and she becomes the captor's property. Where this is not countenanced, it is possible to buy her from her guardian, and then presumably her price, like that of other things, is a matter of supply and demand. The actual number of girls born and the practice as to infanticide must affect their value, and we can understand that better treatment of a wife becomes necessary to the husband who wishes to retain her.[1] In other cases the economic value of the woman may be high—for example, where agriculture is becoming important and is still regarded as women's work. In yet other cases women are the repositories of magical lore, and men fear them.[2] These and doubtless other disturbing causes considerably modify the status, nominal or real, of women in the uncivilized world, but the fluctuations which they cause are fluctuations about a centre of gravity which is sufficiently low.

In the *Simpler Peoples* we sought to assess the position of women as objectively as possible by the method of reckoning a point for each custom that would tell in their favour, and, on the other side, a point for each unfavourable feature. For this purpose we take what we suppose to correspond to the judgment of an average civilized community. This judgment is by no means final, and in that sense the whole method is subjective. But as an answer to the question how far does the treatment of women in the lower economic grades correspond or contrast with that of modern civilization, it yields an objective relation and is the only method which we could devise yielding any definite answer. From this point of view monogamy is regarded as favourable to the woman and polygamy as unfavourable. That is not always the view of women themselves in polygamous communities, but it is the view of civilized woman, which is the point here in question. Divorce we only reckoned when at the will of the husband, other cases being of ambiguous value. The husband's right of chastisement counted as a negative point, and the protection of the wife as positive, but we gave it only half value, as it may co-exist with considerable power of marital chastisement. Other points were the division of work and general allegation of equality or inequality, and the admission of women to government.[1] Cases were counted good which yielded a net positive mark, indifferent if they gave a zero, and bad if a negative. The results showed no striking or progressive differences between the grades, but indicated that in the Agricultural societies as a whole the position of women was slightly better, and in the Pastoral a little worse, than among the Hunters but throughout the negative marks heavily preponderate, as the appended table shows—

---

[1] Hence, probably, the favourable position often enjoyed by women in polyandrous communities. To us polyandry seems necessarily degrading to a woman. To the women of the polyandrous tribe it means that they are sought after, and therefore prized.

[2] This important suggestion is due to Dr. Westermarck (*Soc. Papers*, p. 159), who is also inclined to lay stress on the economic factor. (On this point cf. Ratzel, ii. 130.)

Position of Women.

CASES.

	Good.	*Indifferent.*	*Bad.*
Hunters . . .	22	6	131
Pastoral	4	1	35
Agricultural	65	26	244
Totals	91	33	410

or as percentages—

Hunters	14	4	82
Pastoral	10	2·5	87·5
Agricultural	19	8	73

The only type of culture forming an exception to the rule is that of the forest tribes of Asia and Africa. Their case shows that the very lowest culture is compatible with a favourable position for women, but in view of the relations subsisting in very low cultural grades in North and South America, as well as in Australia, this exception cannot be taken as evidence for any general equality of women in the beginnings of human society, nor, therefore, for any general decline as an accompaniment of the first advances of society. It is only in the pastoral stage, with the fuller development of the patriarchate, that we find signs of a more complete subjection of the wife.

---

[1] For the full statement of the method, see *Simpler Peoples*, p. 148 *seq.*

To sum up. An institution of the nature of marriage is apparently universal. It is improbable that custom has anywhere left the relations of the sexes wholly unregulated, and its regulations include the appropriation of individual men and women to each other. But in early society the prohibitions or restrictions of choice to certain categories are of more moment and more strictly enforced than the claims of the individual husband or wife. In the majority of cases the union is easily broken, polygamy is in most instances allowed, polyandry in a few, licence on occasion is not infrequent, and prenuptial relations are often disregarded. All these are marks of an incomplete development of family life; and in the "maternal" family the method of counting kinship tends to separate the interests of the father from those of his household. The patriarchal family is more firmly knit, but provides no adequate status for the wife and mother. The position of woman varies, but in the majority of cases is one of dependence. She is generally given in marriage by her relations, in three cases out of four for some sort of consideration, which in numerous instances amounts to a true purchase, and is on the whole subject to male rule. On this point the "maternal" system does not materially alter her position. In all these respects, however, there are at each grade of development interesting exceptions. Monogamy occurs in all the grades except the higher Pastoral, and in some of the lowest the tie is virtually indissoluble, but there is no reason to regard this as the primitive form of the institution. At the same time the practice of polygamy as distinct from its admissibility increases with the economic advance. So too does the custom of purchase. Mother-right also is commoner at the lower than at the higher levels, but there is no clear evidence of any stage at which it is universal. In other respects the conditions affecting marriage, the family life, and the status of woman are roughly constant throughout the economic gradations. In each there are instances in which as judged by modern standards the position of woman is relatively satisfactory, but in each these are a minority. Unkindness and ill-treatment are by no means the rule. On the other hand, neither romantic sentiment nor the ethical claims of personality play any important part. Early society achieves with difficulty the consolidation of the family life; and the patriarchal basis on which this is finally effected, confirms, if it does not seriously accentuate, the dependent position of woman.

CHAPTER V

WOMAN AND MARRIAGE UNDER CIVILIZATION

1. It is with the Patriarchal type of Family organization, it would seem, that most of the civilized races have started their career in history. The stage of Mother-right is clearly left behind when their history begins. Traces of it remain, like the right of the Mother's Brother in the German law, but they are mere traces which would be unintelligible if we had not a mass of customs among other peoples by which to interpret them. Whether we look at the ancient laws and customs of India, Persia, Greece or Rome, of the early Celtic and German tribes or the ancient Slavs, or turn to the Semitic and Mongolian civilizations and trace back the Family through Islam to the Arabia of Mohammed's time, through the Old Testament to the days of the Patriarchs, through Babylonian civilization to the Code of Hammurabi, through Chinese literature to the ancient classical books, we find that where civilization is beginning the Family is in some form or other already organized under the rule of the Father.[1] The type of marriage law, of family structure, and for the most part the attitude to woman appropriate to the Patriarchal stage underlie the social history of civilization and are deeply imbedded in its structure. The strongly knit family life, the close personal relations of father, mother and child have formed the nucleus of the stronger and greater social growths. Over a large part of the civilized world the extension of these relations by the family cult and the worship of ancestors has proved to be a social bond of marvellous strength and endurance. Yet this unity may be purchased dearly by the loss of independence on the part of the individual members of the family, and we have seen how far this is often carried in the barbaric world. We have now to see how civilization, starting, in the great majority of cases, with this type of family, has dealt with the social and ethical problems involved.

In the early civilization of Asia, the position of women, and particularly of married women, was not worse, but, on the whole, better than one would expect on the analogy of later times and of contemporary civilizations. In ancient Babylon, in the time of Hammurabi, *i.e.* probably between 2150 and 1950 B.C., marriage was arranged with the parents, without reference to the wishes of the bride,[1] by a form of purchase. It was, however, a modified form approaching more nearly to the exchange of gifts which we find in many primitive races. A sum was given, it appears from the code, to the wife's father as well as to the bride herself, but this payment[2] was not universal, and on the other side of the account the father made over to his daughter on her marriage a dowry which remained her own property in the sense that it was returned to her in the case of divorce or on the death of her husband, that it passed to her children, and, failing them, to her father.[3] Thus the method of marriage appears as a quasi-commercial transaction, and the decision thereon belongs to the parents of the parties.[4] Similar commercial considerations dominate the law of divorce, the leading points of which may be given in the words of Hammurabi's code.

---

[1] The Egyptian family is perhaps an exception (see below, p. 187).

> "137. If a man has set his face to put away his concubine who has borne him children, or his wife who has granted him children, to that woman he shall return her her marriage portion and shall give her the usufruct of field, garden, and goods, and she shall bring up her children. From the time that her children are grown up, from whatever is given to her children they shall give her a share like that of one son, and the husband of her choice shall marry her.
>
> "138. If a man has put away his bride who has not borne him children, he shall give her money as much as the bride price, and shall pay her the marriage portion which she brought from her father's house, and shall put her away.
>
> "139. If there was no bride price, he shall give her one mina of silver for a divorce.
>
> "140. If he is a poor man, he shall give her one-third of a mina of silver."[5]

---

[1] Meissner, *Beiträge zum altbabylonischen Privatrecht*, 13.

[2] The case of marriage without a bride price is contemplated in Hammurabi, section 139 (Kohler, 118)—that is to say, if bride price is the right translation, and if it is not rather the sum which, in the regular contract forms, the husband agrees to give the wife in case of divorce.

[3] The dowry might exceed the bride price (section 164). On the other hand, it remained in a sense in the wife's family, as, if children failed, her father regained it on repaying the bride price (section 163).

[4] See sections 163–6, 159–161.

[5] I quote Dr. Johns' translation, but, following Kohler, have twice substituted bride price for "dowry." It is clearly intended that the unoffending wife shall have not only her dowry, which is really her own property or that of her family (section 162), but either the bride price, which represents, so to say, the worth of her own person, or, what I cannot help suspecting to be the meaning, the amount which at the time of the

On the other hand, the woman who "has set her face to go out and has acted the fool, has wasted her house, has belittled her husband," may either be divorced without compensation or retained in the house as slave of a new wife. The wife may also claim a divorce (or separation)[1] "if she has been economical and has no vice, and her husband has gone out and greatly belittled her," but she acts at some risk, for if on investigation it turns out that she had been uneconomical or a goer about, "that woman one shall throw her into the waters."[2] Thus the wife has certain pecuniary guarantees against arbitrary divorce, while if ill-treated she may leave her husband, but her position as his subject is marked by the manner in which infidelity is treated. The law provides that both parties should be put to death unless the king pardons his servant or the "owner" his wife.[3] The lordship of the husband is seen also in his power to dispose of his wife as well as her children for debt.[4]

Polygamy appears, not in the rich luxuriance of later Asiatic civilization, but in a restricted form. A man might marry a second wife if a "sickness has seized" his first wife, but the first is not to be put away.[5] Apparently this is the only case in which two fully equal wives are contemplated by the code, but it was also possible for a man to take a secondary wife or concubine, who was to be subordinate to the chief wife. This was a common practice when the wife was childless, but was apparently legal even when she had children.[6]

---

marriage the husband contracted to give her in the event of a divorce. In the contracts of the period the sum is specified. In one case it is a mina, in another ten shekels. The wife also states explicitly that if she repudiates her husband she shall be drowned, strangled or sold, as the case may be.

[1] Nothing is said of her being allowed to marry again. She is to go to her father's house. Observe above that when a divorced woman has children it seems to be implied that she will, at any rate, remain unmarried till they are grown up.

[2] The translations differ here. I follow Dr. Johns (Hammurabi, sections 141, 142, 143).

[3] Hammurabi, section 129. On the other hand, she is allowed to purge herself by oath from an unproved accusation; if it is made by her husband, "she shall swear by God and return to her house"; if it is made by some one else, she shall plunge into the holy river (131, 132).

[4] The period of debt slavery was, however, limited to three years (Hammurabi, 117).

[5] Hammurabi, 148.

[6] The provisions of the code are not perfectly clear. The relevant sections run as follows: 144. "If a man has espoused a woman, and that woman has given a maid to her husband and has brought up children, that man has set his face to take a concubine, one shall not countenance that man, he shall not take a concubine. 145. If a man has espoused a woman and she has not granted him children and he has set his face to take a

To sum up, the early Babylonian marriage law contemplates marriage by purchase or exchange of gifts with a restricted polygamy and considerable authority and privileges for the husband, moderated by certain provisions for the protection and maintenance of the wife. But in relation to other persons the wife is a much more free agent than in many civilized countries at the present, or at any rate in recent times. She could already conduct business and in certain cases dispose of property, and, at any rate in later Babylonian times, she appears as possessed of full legal personality, carrying on processes of law and appearing as a qualified witness.[1] In this later period, moreover—that

---

concubine, that man shall take a concubine, he shall cause her to enter into his house. That concubine he shall not put on an equality with his wife." (I have followed Dr. Johns' translation, but substituted "woman" for "votary" in accordance with the views of other translators.) It is not clear from this, as it stands, whether a man could compel his wife to give him a concubine, in case the wife had children, but elsewhere the case of a man having children by both wife and concubine is clearly contemplated, and in the contracts there are cases of a man marrying two wives, of whom one is to be subject to the other. Thus Arad-Samas takes Iltani, the sister of Taramka, as his wife. He promises to care for her well-being, and to carry her chair to the temple of Marduk; he is already married to Taramka, but Taramka is placed by the contract in an inferior position to Iltani. "All children," the contract reads, "as many as there are, and as many as shall be born, are Iltani's." If Taramka says to Iltani, "You are not my sister," something terrible happens, as to the nature of which a hiatus in the inscription leaves us in ignorance. If either wife says to Arad-Samas, "You are not my husband," she is to be branded and sold for money; if they both do it (presumably if they conspire to do so), they are to be thrown into the river. If Arad-Samas repudiates either of them, he is to pay a mina of silver (Meissner, *ib.*, p. 71). In this contract, essentially the same law as that of Hammurabi is seen in active operation, and it is clear that a certain form of polygamy or concubinage is contemplated, although there are children in existence by the first wife. Apparently the object of the code is to maintain the supremacy of the chief wife, while imposing on her, if childless, the duty of granting children to her husband. The concubine should be provided by her. If she failed to give him one, the man might take one, but must still treat his wife as mistress of the home. There is no prohibition of concubinage merely on the ground that the legitimate wife has children of her own. Further, it is only the regular concubinage with a fixed status, determined by contract, which is thus limited. There is nothing said to limit intercourse with a female slave, whose children might be adopted at will by the father, and thus share in the inheritance with the legitimate children (Hammurabi, 170, 171). On the whole, we gather (1) that, in case of sickness, there might be two regular wives; (2) there might be, in case of childlessness, and perhaps in other cases also, a regular concubine, subordinate to the wife; (3) a slave concubine unprotected by contract, whose children might or might not be recognized and inherit.

[1] Kohler and Peiser, *Aus dem Babylonischen Rechtsleben*, iii. 8, etc. The marriage law had also improved in the wife's favour. Contracts of marriage by purchase are very rare, though one exists of the thirteenth year of Nebuchadrezzar, in which the wife is bought for a slave for 1½ gold minas (*ib.*, vol. i. p. 8).

of the last centuries of the independent Babylonian civilization—it appears from the contracts that a woman could protect herself against the advent of a second wife by pecuniary penalties in the marriage contract.[1] On the other hand, her marriage still appears to be at the disposal of her male relations, her brothers, for instance, when the father was dead. Indeed, even the son required the father's consent to his marriage. To this extent the patriarchal power had endured.[2]

2. In ancient Egypt a good deal of obscurity surrounds the position of women. We have to reconstruct it partly from marriage contracts which perhaps do not show us all the conditions of the bargain, partly from incidents in stories, partly from passages in the moralists, partly from the descriptions of Greek travellers. We have no precise and certain information as to the structure of the family, on which everything turns; and we are dealing with a period of four thousand years or more, in the course of which there is time, even in the slow-moving East, for many things to change. In fact, our fullest information relates to the very latest period of independent Egyptian history, and to the time of the subjection to Persians, Greeks and Romans. In this period Greek observers, as we know from Herodotus and from a well-known passage in Sophocles, were struck by the independence of Egyptian women, and were possibly led by contrast to exaggerate it.[3] But it is clear that from the Old Kingdom onwards women, married or not, had full right of property with testamentary powers, and could go to law.[4] With regard to their position in marriage our most definite information comes from the contracts. These are all late, being mostly

---

[1] The husband promises if he takes another wife to give her a mina and send her home. This seems to have been a common protection against polygamy. The wife still engages to be put to death, if unfaithful (Kohler and Peiser, i. 7, 8. Cf. Victor Marx, *Die Stellung der Frauen in Babylonien: Beiträge zur Assyriologie*, bd. 4. hft. i. p. 5 seq.).

[2] Kohler and Peiser, i. 9, and ii. 7. The right of the father is limited in Hammurabi. He might only disinherit a son for a serious crime, and then only for a second offence, and with the approval of a judge (168, 169). In other words, the property was the family's and the father had only limited rights over it.

[3] This is clearly true of the statement of Diodorus that the marriage contract specifically enforced obedience on the part of the husband to the wife (Diod. i. 27): *παρὰ τοῖς ἰδιώταις κυριεύειν τὴν γυναῖκα τἀνδρος, ἐν τῇ τῆς προικὸς συγγραφῇ προσομολογούντων τῶν γαμούντων ἅπαντα πειθαρχήσειν τῇ γαμουμένῃ.* This does not accord with the preserved examples. See below.

[4] Griffith, *Catalogue of the John Rylands Papyri*, iii. 28. Gardiner, "Egyptian Ethics" (*Enc. Brit.*, p. 481). The lady Neb-sent conveys land to her children by will under the 3rd Dynasty (Breasted, *Ancient Records of Egypt*, i. 79) and the king's confidante Hetephites receives a legacy of land in the 4th Dynasty (*ib.*, 90).

of the Persian and Ptolemaic period, while the earliest dates from the reign of Psammetichus II. (26th Dynasty), near the close of Egyptian independence. This contract speaks of "compensation" to the woman which seems to comprise two sums. One of these may be given by her father in lieu of her share of the inheritance, and the other by the bridegroom as "morgengabe." Whether this is so or not, the bridegroom proceeds to undertake that if he leaves the woman "who is mine own . . . whether desiring to leave her from dislike (?) or desiring another woman than her, apart from the great crime that is found in woman, I will give to her" the two sums mentioned above, a share of the joint earnings during marriage, and to her children their share of the paternal and maternal property.[1] Clearly a sum is appropriated for the wife's security. Part of this may be her dowry[2] and part a nuptial gift. In any case this sum remains in the husband's hands, but is to go to the wife if he divorces her. She has her own inherited property and her children's right of inheritance both to her and their father is secured. She may, however, be divorced without penalty for adultery. Polygamy seems to be excluded by the terms of the contract. Records of divorce exist from the Persian period: "I have abandoned thee as wife. . . Make for thyself a husband in any place to which thou shalt go,"[3] and in one contract of that reign we find the woman stipulating for the right of divorce under money penalty—nothing said of the "great crime that is found" in man.[4] It seems clear that in this period the position of the wife depended on the bargain. This might, in fact, be varied by a post-nuptial contract.[5] In point of fact these contracts secured the wife by a money penalty against arbitrary divorce, and her children in their inheritance.[6] We must infer that apart from such a settlement the position of the woman would be very weak, and this accords with the view taken by good authorities that among the poorer people loose connexions probably took the place of marriage in great degree.[6]

---

[1] Griffith, *Papyri*, iii. 115.

[2] This would seem to be the case in a contract of the time of Darius, where the man says, "Thou hast given me three pieces of silver." In case of divorce he is to return these plus a third of their earnings.

[3] Griffith, p. 117.

[4] The Ptolemaic contracts allow divorce at will of either party, and enumerate the bridal property which the wife is to take with her in that event. The woman's position would seem to be advanced materially.

[5] Thus a contract of the twenty-second year of Amasis replaces "that writing of wife which I made for thee" in the fifteenth year (Griffith, p. 115).

[6] Gardiner, *Enc. Ethics*, p. 482.

The contracts clearly bar polygamy, and we must assume that it was not the custom in the propertied middle class of their period. Apart from contract it is probable that it was, or had been allowed, though rare.[1] Pharaoh certainly has a large harem in which there is one chief wife, the "great spouse," who accompanies the king in his public acts and particularly in his religious worship, who is always a princess of the royal blood, and probably a sister of the king, who has her own household and her own servants, and might on the king's death obtain practically royal authority as regent. Under her there are secondary wives taking rank according to their birth, and being probably more or less secluded, and beneath them again are a troop of concubines and foreign slaves. The court of Pharaoh was imitated by the feudal chief of every nome, who also had his harem, "where the legitimate wife—often a princess of solar rank—played the rôle of Queen surrounded by concubines, dancers and slaves." How far polygamy may have extended beyond the great nobles we do not know, but if it existed earlier the evidence of the contracts enables us to infer that it was dying out in later times. The attitude to women must have improved since the days of the Old Kingdom when Pharaoh boasts of having carried off the wives of other men, and alleges these exploits as proof of his truly royal nature.[2] On the other hand, the position of the slave girl is indicated in the self-eulogy of a Theban high priest: "I knew not the handmaid of his (my father's) house. I did not curse his brother, etc." It is filial piety which is the merit here. Prenuptial relations were, in fact, lightly regarded,[3] and this fact, combined with slavery, implies concubinage regularized or other. Brother and sister marriage was not rare.[4]

On the relations of husband and wife the moralists of the Middle and New Kingdom throw some light. They very properly enjoin kind treatment of the wife upon the husband. To this effect run the precepts of Ptah-Hotep: "If thou art successful and hast furnished thy house and lovest the wife of thy bosom, then fill her stomach, and clothe her back. The medicine for her body is oil. Make glad her heart during the time that thou hast. She is a field profitable to its owner."[1] These are most proper sentiments, blended, as they are, with that simple worldly wisdom and gentle appeal to self-interest which characterize the utterances of the excellent Ptah-Hotep, first of all the race of platitudinarians; but excellent as the sentiment is, it does not imply the subjection of the husband to the wife, but rather the contrary.[2] The maxims of Ani are a little more detailed: "Do not treat rudely a woman in her house when you know her perfectly; do not say to her, 'Where is that? bring it to us,' when she has set it perfectly in its place which your eye sees, and when you are silent you know her qualities. It is a joy that your hand should be with her. The man who is firm of heart is quickly master in his house."[3] All this is in the approved Oriental style, and so also is Ani's recommendation to the wife: "What does one speak of day by day? Let the professions speak of their duties, the wife of her husband, and every man about his business."[4]

---

[1] Gardiner, *Enc. Ethics*, p. 481.

[2] Maspero, *Recueil de Travaux*, vol. iv; *Pyramide de roi Ounas*, p. 76.

[3] Gardiner, *loc. cit.* 481, 482. In the "Negative Confession" (see below, Part II. chap. ii.) adultery is repudiated, and impurity while serving the god or in a sacred place. It does not on balance seem probable that fornication, as such, figures in the list of sins (Griffith, *World's Literature*, p. 5337; Gardiner, *loc. cit.*; Max Müller, *Liebespoesie der alten Ægypter*, p. 7. On the other side, Budge, *Book of the Dead*, ii. p. 361).

[4] Gardiner, *loc. cit.*

Honour to the mother, however, is strongly insisted on

"Thou shalt never forget thy mother, and what she has done for thee, that she bore thee, and nurtured thee in all ways. Wert thou to forget her then she might blame thee, lifting up her arms unto God, and He would hearken unto her complaint. For she carried thee long beneath her heart as a heavy burden, and after thy months were accomplished she bore thee. Three long years she carried thee upon her shoulder and gave thee her breast to thy mouth. She nurtured thee nor knew offence for thy uncleanness. And when thou didst enter school and wast instructed in the writings, daily she stood by the master with bread and beer from the house."[1]

---

[1] Flinders Petrie, p. 132. F. L. Griffith, *The World's Literature*, p. 5335.

[2] There is a little more point in a further maxim of Ptah-Hotep: "If thou makest a woman ashamed, wanton of heart, whom her fellow-townspeople know to be under two laws (explained by Mr. Griffith as meaning in an ambiguous position), be kind to her a season; send her not away, let her have food to eat. The wantonness of her heart appreciateth guidance" (Griffith, *World's Literature*, p. 5337). Apparently this is a recommendation, couched, it must be admitted, in mild terms, to a man who has seduced a woman to treat her with consideration. There is clearly no question of any obligation.

[3] The Boulak Papyrus, in Amélineau, *La Morale Egyptienne*, p. 188. Brugsch translates the first words: "Do not strike your wife." With the above compare the Ptolemaic precept, "May it not happen to thee to maltreat thy wife whose strength is less than thine, but may she find in thee a protector" (Flinders Petrie, p. 133).

[4] *Maxims of Ani*, § 30. Amélineau, *La Morale Egyptienne*, 113. As early as the 6th Dynasty an obedient priest's widow gets a legacy "because she was so greatly honoured in my heart; she said nothing to oppose my heart" (Breasted, i. 155). It should be added that the husband could apparently put the unfaithful wife to death. In the story of the "Two Brothers" it is narrated without comment, and rather as a matter of course, that the husband slew his wife and cast her to the dogs (Griffith, *World's Literature*, 5257). According to Diodorus, in cases of adultery the paramour was punished with 1000 blows, the wife by having her nose cut off (I. 78. 4).

We do not know the Egyptian system of kinship, but it is recognized that the maternal link was the closer[2] and it may be that a maternal system lay at the basis of the Egyptian family and strengthened the position of women. In later times this influence would be reinforced by the important part taken by women in industrial and commercial life. In these relations and in social intercourse generally it is allowed on all hands that their position was remarkably free. Little restraint was placed on their intercourse with men, they appear on the monuments eating and drinking freely—sometimes too freely—in masculine company, and they surprised the Greek travellers by going out without restraint to work at their trade or manual labour while the men often worked at home.[3] Of this position women in the commercial and propertied classes availed themselves to improve their condition as wives. But the evidence of the contracts cuts both ways. If they secured the women who were in a position to obtain them, they illustrate the precarious situation of the wife under the ordinary law. Our information is broken and incomplete, but taken as it stands and viewed as a whole it by no means suggests a real equality of the sexes.

---

[1] From the Boulak Papyrus, translated by Griffith, *op. cit.*, p. 5340, from the German of Professor Erman.

[2] Gardiner (*Admonitions of an Egyptian Sage*, p. 43) says that the system was transitional. According to Max Müller (*Liebespoesie*, p. 6) descent was reckoned through the mother, and her brother acted as guardian down to a late period.

[3] W. Max Müller, *loc. cit.*, points out that this freedom would not apply to the bondwomen of the peasantry, who were under the arbitrary power of royal and priestly officials, and wove for them shut up in a work-house. Here, however, we touch the general question of slavery rather than the special position of women. It is more to the point that to have refrained from pressing a widow remained a matter for boasting, and that education in reading and writing was not often extended to girls. It is going too far to say with this writer that no ancient or foreign people, except those of New Zealand, have given women so high a legal position. The attitude to women in Egyptian literature is not particularly respectful. Often she is represented as the temptress, for instance in the Boulak Papyrus—

"Keep thyself from the strange woman who is not known in her city. Look not upon her when she cometh and know her not. She is like a whirlpool in deep waters, the whirling vortex of which is not known. The woman whose husband is afar writeth unto thee daily. When none is there to see she standeth up and spreadeth her snare. Sin unto death is it to hearken thereto" (Griffith's tr. following Erman, *World's Literature*, p. 5340).

The general tendency of the passage, which recalls the well-known chapter in Proverbs, is plain enough, but whether the warning is principally directed against the harlot or the adulteress is not wholly clear.

3. Both in Egypt and Babylonia the position of women was in some respects better than our traditional conception of the Oriental woman would lead us to expect. In other cases that conception accords only too closely with the facts. Each civilization has had its own peculiarities, but they have been variations upon one type. In India tradition starts with the heroic age of the Vedas, in which the paternal power is already fully developed. The father is master and, indeed, owner of the family; wife, sons, daughters and slaves have no property of their own, but are rather his property. On his death, his place is taken by the eldest son, into whose tutelage the widow passes. The daughter might be sold to an intending husband,[1] and it is not probable that her consent was a material condition.[2] The widow passed to her husband's brother until a son was born: she did not in this age follow her husband to the grave, though the funeral ceremony strongly suggests the previous existence of such a custom.[3] Finally, the Vedas contain distinct traces of polygamy, though it was doubtless an exception.[4] Thus Indian family life begins with a typical Patriarchate. To this system a religious turn was given by the Brahman law. In some respects the Brahmans endeavoured to purify the marriage relationship and to provide for the protection of the wife. This appears especially in the attempt to prohibit marriage by purchase. This form of marriage is recognized, but figures along with marriage by capture as one of the four blamable kinds, and "no father who knows the law must take even the smallest gratuity for his daughter." He that

---

[1] The purchase of brides is mentioned in the Epic Poems. Thus Bhishma purchased the daughter of the Prince of Madras for Pandu, with gold and precious stones (Duncker, *History of Antiquity*, vol. iv. pp. 255–266). Capture was probably an alternative to purchase (*loc. cit.*).

[2] Muir (*Sanscrit Texts*, v. 459) quotes a passage from the Vedas which suggests that some freedom of choice was exercised by women under favourable conditions. "Happy is the female that is handsome. She herself loves (or chooses) her friend among the people." In the Mahabharata the King's daughters appear to choose their husbands, but this is a prerogative of Royalty.

[3] When the widow has led her husband to the place of burial, she is exhorted to "elevate herself to the world of life," for her marriage is at an end (Duncker, *op. cit.*, iv. 511).

[4] In one hymn the poet prays that Pūshan will protect him and provide him with a supply of damsels (Muir, v. 457, 461).

does so is "a seller of his offspring."[1] Purchase is reduced to the form of a fee given to the Brahman for the fulfilment of the sacred law, and this fee is not to be appropriated by the relatives themselves. Yet notwithstanding Manu's discouragement of the practice, marriage by purchase persisted in a modified form, the final compromise being that the present given by the suitor was assigned to the benefit of the bride and became her dowry, passing back to her own family on her death. The barbaric form of marriage by capture or abduction, which is morally condemned by Manu but legally sanctioned for the Kshatriya caste, became obsolete, being forbidden in Narada's code, and the two forms of marriage which persist in India to this day are the Brahma, the gift of a daughter decked and honoured with jewels to a man learned in the Veda whom the father himself invites, and the Âsura, or purchase in the modified form described.[2]

Only in one case, moreover, does Manu recognize the free-will of the maiden in the matter of her own marriage. If her father fails to provide her with a husband within three years of her attaining maturity she may marry whom she will.[1] In all other cases her guardian disposes of her hand. The woman who is thus passed from the absolute control of her father into the absolute control of her husband must honour, obey and merge herself in him. "Though destitute of virtue, or seeking pleasure (elsewhere), or devoid of good qualities, (yet) a husband must be constantly worshipped as a god by a faithful wife."[2] "She must always be cheerful, clever in (the management of her) household affairs, careful in cleaning her utensils, and economical in expenditure."[3] On his side the husband is commanded to show her respect. "Women must be honoured and adorned by their fathers, brothers, husbands, and brothers-in-law, who desire (their own) welfare."[4] He is to be faithful to her, "being constantly satisfied with her alone." Her son is even to respect her more than his father. "The teacher is ten times more venerable than a sub-teacher, the father a hundred times more than the teacher, but the mother a thousand times more than the father."[5] And so Vasishtha says, "A father who has committed a crime causing loss of caste must be cut off. But a mother does not become an outcast for her son."[6] But though respected if virtuous, she is to be chastised if the husband thinks her otherwise. The chastisement, however, is strictly limited. "A wife, a son, a slave, a pupil, and a younger brother of the full blood, who have committed faults, may be beaten with a rope or split bamboo, but on the back part of the body (only), never on a noble part; he who strikes them otherwise will incur the same guilt as a thief."[7] Here, as elsewhere, fluctuations of opinion show through Manu's text. In one place we read, "Day and night women must be kept in dependence by the males of their families,"[8] yet a few sections on the appeal is to women themselves: "Women confined in the house under trustworthy and obedient servants are not (well) guarded; but those who of their own accord keep guard over themselves are well guarded."[9] But this higher note is seldom struck. The Brahmans are far too much impressed with the evil disposition of women,[10] and the husband is recommended to keep his wife well employed about the house keeping things clean and preparing his food, as an expedient for guarding her.

---

[1] Manu's eight forms of marriage and his comments on them are full of instruction for the transition from barbaric to civilized marriage laws. The gift of a daughter, after decking her, to a man learned in the Veda and of good conduct . . . is called the Brâhma rite. The gift of a daughter who has been decked with ornaments to a priest . . . they call the Daiva rite. When (the father) gives away his daughter according to the rule, after receiving from the bridegroom, for (the fulfilment of) the sacred law, a cow and a bull or two pairs, that is named the Ârsha rite. The gift of a daughter (by her father) after he has addressed (the couple) with the text, "May both of you perform together your duties," . . . is called . . . the Prâgâpatya rite. When (the bridegroom) receives a maiden, after having given as much wealth as he can afford to the kinsmen and to the bride herself, according to his own will, that is called the Âsura rite. The voluntary union of a maiden and her lover one must know (to be) the Gândharva rite, which springs from desire, and has sexual intercourse for its purpose. The forcible abduction of a maiden from her home, while she cries out and weeps, after (her kinsmen) have been slain or wounded and (their houses) broken open, is called the Râkshasa rite. When (a man) by stealth seduces a girl who is sleeping, intoxicated, or disordered in intellect, that is the eighth, the most base and sinful rite of the Pisâkas (Manu, iii. 27–34). Of these, the first four are allowed to Brahmans. They are all, in effect, religious marriages, the gift in the third, or Ârsha, form being of a ceremonial character, as it is to be "for the fulfilment of the sacred law," not a price for the daughter. A variant appears in the code of Apastamba (II. vi. 12, 13; Mayne, p. 82), wherein a gift of value was made to the bride's parents, but returned by them. The four blamable rites are purchase, capture, voluntary union, and treacherous seduction. Of these, the two first, as we have seen, are allowed to the warrior caste. The fifth and eighth, the law book of Bauddhayana allows to Vaisyas and Sudras, since they "are not particular about their wives" (Baud., I. ii. 13, 14). These are, in the main, relics of barbarism, yet a higher conception appears when Bauddhayana remarks that "some recommend the Gândharva rite (*i. e.* voluntary union) for all castes, because it is based on mutual affection" (*ib.*). But this germ of a true marriage by mutual consent was not allowed to fructify.

[2] J. D. Mayne, *Hindu Law and Usage*, pp. 79–85.

---

[1] Manu, ix. 90 ff.
[2] Manu, v. 154.
[3] Manu, v. 150.
[4] Manu, iii. 55.
[5] Manu, ii. 145.
[6] Vasishtha, xiii. 47, 48.
[7] Manu, viii. 299, 300.
[8] Manu, ix. 2.
[9] Manu, ix. 12.
[10] When creating them, Manu allotted to women (a love of their) bed, (of their) seat and (of) ornament, impure desires, wrath, dishonesty, malice, and bad conduct (Manu, ix. 17, and see the whole passage, 13–18).

On the strict theory of Manu a wife could have no property. In this respect she is placed on one footing with a son and a slave.[1] The wife could not leave her husband under any circumstances, but he might take other wives and might "supersede" rather than divorce her if she "drink spirituous liquor, is of bad conduct, rebellious, diseased, mischievous or wasteful." Further: "A barren wife may be superseded in the eighth year, she whose children all die in the tenth, she who bears only daughters in the eleventh, but she who is quarrelsome without delay." "But a sick wife who is kind to her husband and virtuous in her conduct may be superseded only with her own consent and must never be disgraced."[2] There are, indeed, traces in the text of Manu, on the one hand, of a custom allowing deserted wives as well as widows to marry again, and, on the other, of an idealistic attempt to establish indissoluble monogamous marriage. But these remain as traces only. What the Brahmans actually succeeded in doing was to prevent the re-marriage of women even after the death of their husbands, while men obtained the right to take as many wives as they pleased, though they might not dismiss any existing wives save for one of the faults enumerated.[3] Such having been the position of the wife during the husband's lifetime, after his death she must remain faithful to him, "she must not even mention the name of another man after her husband has died."[1] She is now under the tutelage of her son, for a woman is never a free agent. "By a girl, by a young woman, or even by an aged one, nothing must be done independently, even in her own house. In childhood, a female must be subject to her father, in youth to her husband, when her lord is dead to her sons; a woman must never be independent."[2]

---

[1] This, however, is not carried out consistently (Manu, ix. 194).

[2] Manu, ix. 80–82.

[3] Manu, always liberal in inconsistencies, is more than usually so on this point. The cause, as shown by J. D. Mayne, is clearly mutilation of the text in the interest of conflicting views. Thus in ix. 46, 47, we read: "Neither by sale nor by repudiation is a wife released from her husband. . . . Once is the partition (of the inheritance) made, (once is) a maiden given in marriage, etc." From this it is clear that the repudiated wife could not re-marry. Further, it seems that the attempt was being made to impose monogamy and conjugal fidelity on the husband as well. "Let mutual fidelity continue unto death, this may be considered as the summary of the highest law for husband and wife" (ix. 101). Connect this with v. 168, "Having thus, at the funeral, given the sacred fires to his wife who dies before him, he may marry again, and again kindle the (fires)." This seems to imply monogamy with mutual fidelity as the ideal, but in other parts a plurality of wives is freely contemplated, and in ix. 77–82, the dismissal of a wife is permitted on several conditions as shown in the text. Further, Mayne (*Hindu Law and Usage*, p. 93) shows conclusively that a passage has been omitted before ix. 76, justifying a wife in marrying again after desertion for a period of years. Thus we trace (1) a period when widows and deserted wives may marry again, (2) an attempt to establish monogamy. But the net result of this sacramental conception of marriage, impinging on actual law and usage, was, in the Brahmanic codes, the greatest liberty for the man, and the most complete bondage for the wife.

The chastity of women was to be preserved by their seclusion, and their unfaithfulness punished by their husbands. We have seen that in the barbaric world the infringement of chastity is regarded mainly as an offence against the woman's owner. The influence of this conception is still apparent in the Brahmanical codes, which, in assigning punishments for seduction and adultery, observe a marked distinction between the cases where the woman is properly guarded and those in which she is free from proper surveillance.[3] The same conception had another consequence, paradoxical enough in our eyes. As the husband was the proprietor of the wife, he was also the owner of her children, whether they were his children after the flesh or not. And as children were a desirable acquisition for the purposes both of this world and the next, it was not unusual for a childless husband to compel his wife to bear him a child by another man. In the Mahabharata we read that wives who refuse such a duty are guilty of sin. It was through a similiar order of ideas that if the husband died childless his brother[1] was appointed to raise up seed to him. This, of course, was for religious purposes only. The son of the appointed lover, on the other hand, was the son for this world as well as the next. But with the progress of civilization the Niyoga, as this custom was called, gradually fell into discredit and made way for a purer conception of the relations of husband and wife. It deserves mentioning here as one of the most remarkable paradoxes in the field of Comparative Ethics that the same teaching which insists so strongly on the guarding of women as though the preservation of their persons for the benefit of their owners were the sole object of their existence, should also say of adultery that "men who have no marital property in women, but sow their seed in the soil of others, benefit the owner of the woman."[2] But the paradox resolves itself into this, that proprietary right rather than personal self-respect and love is deemed the basis of conjugal obligation. Property is more than personality, and it is precisely this that is characteristic of Oriental as, on the whole, of primitive marriage.

---

[1] Manu, v. 157. On the other hand, not only is suttee not mentioned by Manu, but the original text appears, as we have seen, to contemplate re-marriage (see especially ix. 175, 176). Among the Jats of the Punjab, re-marriage is allowed to the deserted wife and to the widow; in Western India it is allowed to the lower castes if the husband is impotent, if the parties are continually quarrelling, or if, by mutual consent, the husband breaks the wife's neck ornament, or if he deserts her for twelve years (J. D. Mayne, *op. cit.*, 94, 95). Polygamy, on the other hand, as to which the earlier text of Manu seems to have wavered, remains to this day an undoubted right. On the whole, we may say that nowhere has the subjection of women been more complete than in India, and Mohammedan influence, far from improving matters, has only furthered the practice of seclusion.

[2] Manu, v. 147, 148.

[3] For a scale of penalties modifiable according as the woman is guarded or not, see Manu, viii. 374 ff.

On the subject of legal punishments and religious penances for different forms of immorality, Manu is quite bewildering in his divergencies of statement, and the case is made worse if the other Brahmanist law books are consulted. Two instances may suffice to illustrate the difficulty of extracting a consistent view. In viii. 371, the king is to cause the adulteress to be devoured by dogs. But in xi. 177, "an exceedingly corrupt wife" is merely to be confined to one apartment and to perform the penance prescribed for males in the case of adultery. Probably the explanation is that the first passage, which speaks of a wife "proud of the greatness of her relatives," lays down the penalty for high caste women who love men of lower caste. This is explicitly stated in the corresponding passage of Gautama's code (xxiii. 14, 15). But there is nothing in Manu himself to clear up the point. Again, in xi. 59, intercourse with unmarried maidens is somewhat strangely classed with the deadliest of all sins—violation of the Guru's (teacher's) bed—but in § 62 it is classed among minor offences causing loss of caste.

I shall not attempt to thread my way through the maze, but will note a few salient points—

(1) Considering the low position of women, the punishments of immorality, where no caste complication is involved, seem moderate. It would

4. Turning from India to China, we do not find much change in the position of the woman. The arrangement of marriage

---

seem as though but little responsibility were attached to the woman. Thus the maiden who makes advances to a man of high caste is not to be fined, only if he is of lower caste is she to be confined to her house (viii. 365).

(2) A low-caste seducer suffered corporal punishment. One of equal caste had to pay the nuptial fee if demanded by the woman's father.

(3) Adultery and fornication appear as religious offences (xi. 59 *seq.*).

(4) The husband's right to kill an unfaithful wife is substantially recognized—the penance required being only to give a leathern bag, a bow, a goat, or a sheep, according to her caste (Manu, xi. 139).

[1] The Levirate is usually connected with the principle that the widow belongs to her husband's family, and probably this was its historical origin in India. But in Manu it rests on religious considerations and is reduced to the dimensions necessary for religious purposes. The brother must only cohabit with the widow so far as it is necessary for the purpose of raising up seed to his brother (Manu, ix. 60), and the whole practice is forbidden in the passage 64–68, which contradicts the clauses permitting the Niyoga.

[2] Manu, ix. 51.

is in the hands of the parents, and the son is as much at their disposal as the daughter.[1]

"Young people," says the Editor of the *She-King*,[2] "and especially young ladies, have nothing to do with the business of getting married. Their parents will see to it. They have to merely wait for their orders. If they do not do so, but rush to marriage on the impulse of their own desires and preferences, they transgress the rules of heaven and violate the law of their lot." The marriage is, in fact, arranged by go-betweens who form a kind of profession, and as it is now, so was it perhaps three thousand years ago in the days of the *She-King*.[3]

The full ceremony of marriage is, as a rule, gone through with only one woman; bigamy or the raising of a concubine to the rank of wife is punished by ninety blows[4] (unless in certain exceptional cases), but there are secondary wives or concubines who owe obedience to the first wife, and it is a point much insisted on in the classical books that the head wife should show no jealousy of her inferiors.[5]

---

[1] Chinese travellers note relics of marriage by capture in the ceremonial and point out that the ideograph for slave is compounded of "woman" and "hand," implying that the woman is the type of that which, in the phrase of the Koran, "your right hand possesses." Further, to marry a wife is written "to take a woman," while to marry a man has a different symbol (Douglas, *Society in China*, 202). In this connection note that the imperial editors, writing on the *She-King*, Part I. Book I. Ode 2, speak of a strict taboo on the relation of husband and wife in antiquity. "Anciently the rules to be observed between husband and wife required the greatest circumspection. They did not speak directly to each other, but employed internuncios, thus showing how strictly reserved should be intercourse between men and women, and preventing all disrespectful familiarity" (Legge, *The She-King*, Part I. Book I. Ode 2, p. 7 note).

[2] Book IV. Ode 7, Stanza 3, note.

[3] "How do we proceed in taking a wife?
Announcement must first be made to our parents.
Since such announcement was made,
Why do you still indulge her desires? . . .
How do we proceed in taking a wife?
Without a go-between it cannot be done."
She-King, Book VIII. Ode 6, Sts. 3, 4.

[4] Fornication is punished with eighty blows, and the pander is liable to seventy (Alabaster, *Notes and Commentaries on Chinese Criminal Law*, p. 367).

[5] Writing of the *She-King*, Dr. Legge says: "The institution of the harem is very prominent, and there the wife appears lovely on her entering into it, reigning in it with entire devotion to her husband's happiness, free from all jealousy of the inferior inmates, in the most friendly spirit promoting their comfort and setting them an example of frugality and industry. It is apparently to these inferior inmates that the concluding verse of an Ode expressing the affectionate devotion of a wife, alludes—

"When your arrows and line have found them,
I will dress them fitly for you . . .

The Chinese husband is master in his own household, the *patria potestas* is strongly developed, and the state interferes inside the family only in extreme cases.[1] The husband may kill his wife if taken in adultery; [2] he may strike her without wounding her,[3] whereas she receives a hundred blows for striking him; [4] while if, for abuse of his parents, he so punishes her as to cause her death, he receives a hundred blows. He may sell his wife,[5] and sometimes does so in times of famine, he may divorce her for barrenness, lasciviousness, disregard of his parents, talkativeness, thievish propensities, envious and suspicious temper, and inveterate infirmity. She, on the other hand, has no power of divorcing him,[6] but at best may arrange to part by mutual consent.[7]

The power of the husband does not end with the dissolution of marriage; if he makes formal complaint of the commission of bigamy by his wife, she is strangled. After the husband's death the widow still owes him a duty. There is no definite institution of suttee, but contemporary authorities tell us that the suicide of widows is frequent, and in the south often public, and turning back to the classical books, we find the widow professing life-long chastity and devotion to the memory of the departed.[8] Hence it is intelligible that women frequently

---

When I know those whose acquaintance you wish,
I will give them of the ornaments of my girdle.
When I know those with whom you are cordial,
I will send to them of the ornaments of my girdle.
When I know those whom you love,
I will repay their friendship from the ornaments of my girdle."
She-King, Part I. Book VII. Ode 8.

[1] Douglas, 78. A father who kills his son without cause is subject to a light penalty. If he kills him for striking or abusing his parents, he goes free (Alabaster, 156). The father may require the courts to order the transportation of an unruly son (*ib.*, 154), and a child may be sold for good cause (*ib.*, 157).

[2] But it must be done on the spot. Otherwise he is liable to a mitigated penalty (Alabaster, 187, 188).

[3] But he must exercise judgment in correcting her. "If he knocks her brains out when told by his mother-in-law to give her a whipping, he will be responsible for the murder" (*ib.*, 189).

[4] Douglas, 81. If the husband kills her for striking him or his parents, extenuating circumstances are allowed. For killing the wife without cause, the penalty is strangulation subject to revision (Alabaster, 186). For killing the husband it is decapitation, a severer punishment because it affects the after-life (*ib.*, 192).

[5] By practice, not, unless in exceptional circumstances, by strict law. If she commits suicide in consequence, he is liable to three years' transportation (Alabaster, 189).

[6] Unless it is for impotence (*ib.*, 182).

[7] Douglas, 71.

[8] "It floats about, that boat of cypress wood,
There in the middle of the Ho,

prefer a nunnery or suicide to marriage. And yet the love of home and yearning for absent wife and child is, we are told, no infrequent theme of Chinese poetry. Such is the power of human feeling to survive all laws and institutions.

The position of Chinese women has not undergone any fundamental change within the historical period. Perhaps in some respects it has deteriorated.[1] In particular, the binding of

---

With his two tufts of hair falling over his forehead,
He was my mate,
And I swear that till death I have will no other.
O mother, O Heaven,
Why will you not understand me ?

It floats about, that boat of cypress wood,
There by the side of the Ho,
With his two tufts of hair falling over his forehead,
He was my only one,
And I swear that till death I will not do the evil thing.
O mother, O Heaven,
Why will you not understand me ? "

She-King, Part I. Book IV. Ode 1.

Cf. Douglas, 216, etc. The sacrifice of wives at the death of the emperor was abolished by Kanghksi 1661–1721 (Douglas, 227). Human sacrifice at funerals (chiefly of women) appears intermittently from the first recorded case (that of Wu, ruler of Tsin, 677 B.C., when sixty-six people were sacrificed) to the present time. It was opposed by the Confucians. In the eighteenth century suttee was on the increase, and to check it the honours conferred on the suttee women revoked, A.D. 1729 (De Groot, *Religious Systems of China*, ii. 721–807). De Groot considers it incredible that the case of Wu should really have been the first. Possibly he was the first of his house to be so " honoured."

[1] The *She-King* describes the difference of attitude to the infant son and daughter in terms which are exactly reproduced to-day—

" Sons shall be born to him;
They will be put to sleep on couches;
They will be clothed in robes;
They will have sceptres to play with;
Their cry will be loud.
They will be (hereafter) resplendent with red knee-covers;
The (future) king, the princes of the land.

Daughters shall be born to him;
They will be put to sleep on the ground;
They will be clothed with wrappers;
They will have tiles to play with.
It will be theirs neither to do wrong nor to do good.
Only about the spirits and the food will they have to think,
And to cause no sorrow to their parents."

She-King, Part II. Book IV. Ode 5, Sts. 8, 9.

In point of fact the lot of the infant daughter was often much worse. The extent of infanticide in China has undoubtedly been exaggerated. The killing even of illegitimate children after, though not at birth, is an offence, though but lightly punished (Alabaster, 170). The practice, however, is frequent in many districts, and it is the daughter who is ordinarily the sufferer.

feet has grown up within the last thousand years, a mushroom growth in the antiquity of China.[1] The great teachers, though personally married to one wife, and having no concubines, did nothing for the amelioration of the position of women. Mencius, indeed, proposed to divorce his wife because he found her in a squatting position on the floor of her room, and was only restrained by his mother's advice from doing so. This same mother expressed the whole duty of Chinese women when she refused to be consulted as to where they should live. She said, "It does not belong to a woman to determine anything of herself, but she is subject to the rule of the three obediences: when young she has to obey her parents, when married her husband, and when a widow her son."

It only remains to add that where men keep women in so much subjection they generally impute to them a double dose of original sin, and the *She-King*, chiming in with the literature of the Hebrews and Hindoos, says, "Disorder does not come down from heaven, it is produced by the woman. Those from whom come no lessons, no instruction, are women and eunuchs."[2]

5. The Hebrew marriage law begins when we first come across it in the fully-developed patriarchal stage. The analogy of primitive Arabian tribes suggests an earlier state of mother-right, but of this there are in the Old Testament only the merest traces.[3] A man acquires a wife by purchase or by service, from her father or her nearest male relative.[4] In either case she passes completely out of her father's family, and belongs to him who has paid for her. "Is there yet any portion or inheritance for us in our father's house?" say Leah and Rachel. "Are we not counted of him strangers? for he hath sold us and hath also quite devoured the price paid for us."[5]

This very neat summary of the theory of marriage by service has already been referred to. But the marriage affairs of Jacob illustrate some further points which we can understand well from the Babylonian code. Part of the agreement between him and Laban is that he shall not "afflict" Laban's daughters, and that he shall not "take wives beside my daughters."[1] This is quite in the spirit of a Babylonish marriage contract. But there is a further point of similarity. Though Jacob took no more wives, each of his two wives gave him a handmaid precisely as is contemplated in the Code of Hammurabi, and the handmaid's children were in each case reckoned to the wife. In Hammurabi's language, "the wife had granted him the children."

---

[1] Yet there is an objection to the bamboo as a penalty for women, and if subjected to it, they are not stripped as they were in England to the beginning of the nineteenth century (Alabaster, *op. cit.*, 107).

[2] *She-King*, Part III. Book III. Ode 10, St. 3.

[3] It is clear that Sarah was really Abraham's half-sister, and his marriage to his father's daughter would be in accordance with primitive custom under mother-right.

[4] Laban apparently gives away Rebecca, his sister, and both he and her mother receive precious things for her. At the same time Rebecca's own wishes clearly are considered.

[5] Gen. xxxi. 14. Mr. Cook, however, suggests that their complaint is that Laban has kept that which should have come to them (cf. supra, p. 154, note 1).

Polygamy is contemplated in the Law, the only limitation being that in the Priestly Code two sisters are not to be married at the same time. Concubinage is also contemplated, and so is the sale of a daughter for that purpose. The daughter that is sold is especially protected in the Book of the Covenant. She is not to be set free in the Sabbatical year, but if she "please not her master who hath espoused her to himself, then shall he let her be redeemed; to sell her unto a strange people he shall have no power." If a girl were espoused to his son she should be dealt with "after the manner of daughters," or if married to her master she was protected in case he took another wife. "Her food, her raiment and her duty in marriage shall he not diminish." In the humane code of Deuteronomy protection is even extended to the captive bondwoman. She is to be allowed a full month for mourning before being married, and once married, "if thou have no delight in her then thou shalt let her go whither she will, but thou shalt not sell her at all for money, thou shalt not deal with her as a chattel because thou hast humbled her."

While there is no prohibition of polygamy in the Law—Deuteronomy merely states that the children of the better-loved wife are not to be preferred to the first-born—in practice, as among the Egyptians, the custom seems to have died out little by little,[2] and in the Proverbs monogamy seems to be assumed throughout. The right of divorce rested entirely with the man, and the grounds of it in Deuteronomy are very vaguely expressed. "If she find no favour in his eyes because he hath found some unseemely thing in her, he shall write her a bill of divorcement." But none of the codes are at pains to define the grounds of divorce clearly. They assume it as a right of the husband, and their careless expressions have given grounds for much difference of interpretation which has affected Christian as well as Jewish Law.[1]

---

[1] Gen. xxxi. 50.

[2] Apparently it was not formally forbidden till the tenth century A.D. (Bryce, *Studies*, ii. 384).

There is no mention in the Law of divorce by the wife, but among the later Jews she could claim a divorce if her husband were a leper, or afflicted by a polypus, or engaged in a repulsive trade.[2]

The position of the woman in the family gives her guardian certain definite rights and duties as to the disposal of her person. Thus Judah, as the head of the family, proposes to burn Tamar, his daughter-in-law, for unchastity, but acknowledges in time that he was bound to give her as a widow of his son Onan to his other son Shelah. The husband's brother, in fact, had the duty of marrying the widow, and, failing the brother, the obligation fell on the kindred. Boaz, as Ruth's kinsman, first offers her to a nearer relative, and on his refusal weds her himself. The daughter does not inherit landed property if there are sons, but failing sons, she becomes the heir, and in that case she must marry within the tribe, a recognition of the eminent ownership of the tribe over the whole land.

Such being the position of women, it is not to be expected that the attitude expressed to them in literature should be one of great respect or admiration. At best their virtues as house-wives were admitted, but in the famous description of the virtuous housewife in the Proverbs there is not a word of a union of mind or soul, and there is little indeed to differentiate the wife from the cheerful, active, intelligent and, let us add, charitable housekeeper. We read that "she spreadeth out her hands to the poor," and again, "she openeth her mouth with wisdom and the law of kindness is on her tongue," but there is no word of the romance of love or of the higher side of the conjugal relation.[1]

---

[1] Of the Jewish Legalists the school of Shammai (first century B.C.), pressing the word "nakedness," which is the most literal rendering of the term translated "unseemly," understood it of unchastity; the school of Hillel, pressing (in Rabbinical fashion) the word "thing," and the clause, "if she find no favour in his eyes" (though this, as a matter of fact, is qualified by the following words, "because he hath found some unseemly thing in her"), supposed the most trivial causes to be included, declaring, for instance, that a wife might be divorced, even if she burnt her husband's food, or if he saw a woman who pleased him better. It may be doubted, however, how far the latter opinion was literally acted upon. The grounds mentioned in the Mishnah as justifying divorce are, violation of the law of Moses, or of the Jewish customs, the former being said to consist in a woman's causing her husband to eat food on which tithe has not been paid; in causing him to offend against the law of Lev. xviii. 19; in not setting apart the first of the dough, Num. xv. 20 ff., and in failing to perform any vow which she has made; and the latter in appearing in public with dishevelled hair, spinning (and exposing her arms) in the streets, and conversing indiscriminately with men, to which others added, speaking disrespectfully of her husband's parents in his presence, or brawling in his house. The Karaite Jews limited the grounds of divorce more exclusively to offences against modesty or good taste, a change of religion, serious bodily defects, and repulsive complaints. That the Hebrew word denotes something short of actual unchastity may be inferred from the fact that for this a different penalty is enacted, viz. death, also the same expression is used, not of what is immoral, but only of what is unbecoming. It is most natural to understand it of immodest or indecent behaviour (summarized from Driver, *Deuteronomy*, p. 270 note).

[2] Driver, p. 271.

On the other side of the account woman is regarded as the source of evil. "Give me any wickedness save the wickedness of a woman" is the burden of Ecclesiasticus. A bad woman is the temptress and the destroyer throughout the Wisdom literature, and it was through woman that sin came into the world, and for this reason, that she was to be subject to her husband.[2]

6. We have seen that among the primitive Arabs mother-right and polyandrous unions prevailed, but in Mohammed's time the women were mere chattels, forming a part of the estate of their husband or father and descending to the son. They were held in low account, and female infants were frequently put to death. "Women are the whips of Satan" is an amiable saying of the masculine Arab of this period, having said which it is not surprising that he should add: "A man can bear anything but the mention of his wives." Mohammed set himself to ameliorate the position of women. "Ye men," he said, "ye have rights over your wives, and your wives have rights over you." But he was not able to carry his reforms very far according to our ideas. He limited the number of legitimate wives to four, but allowed an unlimited number of slave concubines; he insisted that the woman's consent to her marriage should be obtained, but the consent of her guardian also remained essential. Whether the temporary marriage in practice in Mohammed's time is still allowed is debated between the sects.[3]

But free divorce Mohammed was compelled to tolerate: "The thing which is lawful but is disliked by God is divorce." There are, indeed, certain cases in which divorce is compulsory,[4] but even apart from them the husband may divorce his wife without assigning any cause. The wife, however, is protected by the dower, or more strictly, the bride price, of which a portion is deferred, and which may be claimed by the wife if she is divorced without cause.[1] Her position is therefore somewhat similar to that which the provident Babylonian or Egyptian woman secured for herself by the marriage contract. On her side, the wife is bound to live with her husband, but if she can prove ill-treatment, can obtain a separation from the Kadi. Bad conduct or gross neglect is a good defence to a suit brought by the husband for the restitution of conjugal rights.[2] The husband has, however, the right of chastisement, and the admonition of the prophet, "Not one of you must whip his wife like whipping a slave," does not, to European ears, appear to err on the side of chivalry.[3]

---

[1] It is probably another writer in the Book of Proverbs who says that "a virtuous woman is a crown to her husband" (Prov. xii. 4).

[2] Mr. Montefiore points out that the appreciation of a good woman is higher in the "Wisdom of the Son of Sirach" than in the Proverbs, in correspondence with the general advance in her position (*Hibbert Lectures*, 1892, p. 491).

[3] Hughes, *Dictionary of Islam*, p. 314.

[4] Hughes, pp. 87, 88.

Yet Mohammed made the kind and equitable treatment of wives a moral if not a legal duty: "The best of you is he who behaves best to his wives." The lord of many women must be impartial. "When a man has two wives and does not treat them equally he will come on the day of resurrection with half of his body fallen off." But if there is to be kindness, it is to be such as is due to the weaker vessel: "Admonish your wives with kindness, because women were created from the crooked bone of the side."[4]

The position of the wife under the Sunni law is thus summed up by Mr. Hughes—

> "Her consent to marriage is necessary. She cannot legally object to be one of four wives. Nor can she object to an unlimited number of handmaids. She is entitled to a marriage settlement or dower, which must be paid to her in case of divorce or separation. She may, however, remit either whole or part of the dower. She may refuse to join her husband until the dower is paid. She may be at any time, with or without cause, divorced by her

---

[1] *ib.*, 91.

[2] *ib.*, 673.

[3] The traditions record that the prophet forbade the Moslems to beat their wives. Brute force being thus ruled out, natural superiority asserts itself, and the faithful come to complain that the women have got the upper hand. The prophet consequently revokes the order, and then the women complain in their turn. Mohammed is then reduced to moral suasion: "Those men who beat their wives do not behave well. He is not of my way, who teaches a woman to go astray and entices a slave from his master" (Hughes, 671).

[4] A wife taken in adultery might be stoned, but four witnesses with a fivefold repetition of the oath were required to prove the offence (Koran, Part I. chap. iv. 15). Nor is the death-penalty recommended, but rather seclusion in the house (*loc. cit.*, and Hughes, p. 11). Fornication is strictly forbidden to men.

husband. She may seek or claim divorce (khul') from her husband with her husband's consent. She may be chastised by her husband. She cannot give evidence in a court of law against her husband. According to the Sunnis, her evidence in favour of her husband is not admissible, but the Shi'ahs maintain the opposite view. Her husband can demand her seclusion from public. If she becomes a widow she must observe hidād or mourning for the space of four months and ten days. In the event of her husband's death she is entitled to a portion of her husband's estate in addition to her claim of dower, the claim of dower taking precedence of all other claims on the estate."[1]

Nor has a woman full legal privileges outside marriage. Her evidence is not accepted in cases involving retaliation. Her fine is one-half that of a man, and the value of her testimony one-half that of a male witness. Yet she may hold public positions, she may act as a judge except where retaliation is involved, and in some Mohammedan states princesses have ruled. She can hold property, retains the usufruct of her property during marriage, and takes the property with her in case of divorce. She has also a claim to inherit along with her male relations, confirmed by the express words of the prophet.[2] She is not to be slain in war, and for apostasy she is not put to death, but imprisoned until she recants. The general attitude of the Mohammedan world towards her is too well known to need illustration, but two traditional sayings of Mohammed may be quoted as illuminating the intellectual chaos to which a well-meaning man is reduced when he contemplates that helpmate over whom he so complacently assumes superiority and dominion. The first is this, "I have not left any calamity more detrimental to mankind than women," and the second is the complementary expression of the master in his other mood, "The world and all things in it are valuable, but more valuable than all is a virtuous woman."

With this final contradiction mirrored in the double motive for secluding women, (*a*) as a compliment, implying that they are elevated above the ordinary affairs of life; (*b*) as a precaution, implying that they are not to be trusted with liberty—with this contradiction in theory and in practice, rooted as it is in a radically false view of womanhood, we may leave the Oriental world and its efforts to deal with the relations of the sexes.

7. But the first nation of the West to which we turn was in this respect largely orientalized. The Greeks founded Western

---

[1] Hughes, p. 671.

[2] Koran, i. 72; cf. Dareste, pp. 61–63.

civilization, but their rapid advance in general culture was by no means accompanied by a corresponding improvement in the position of women. On the contrary, it is in the earliest period and among some of the most backward states that the woman has most freedom.

The Homeric woman moves freely among men. Nausicaa welcomes Odysseus and brings him to her father's house. She bids him kneel to her mother if he would gain a welcome and succour from her father.[1] The relation of husband and wife is close and tender; Andromache relates how her father's house has been destroyed with all that were in it, " but now, Hector, thou art my father and gracious mother, thou art my brother—nay, thou art my valiant husband."[2]

We never hear of more than one legitimate wife. On the other hand, the carrying off of women as bond-slaves was habitual. Briseis was a recognized portion of the spoil, and such capture implies concubinage along with legitimate marriage.[3] If the bridegroom could not take the bride in a raid, he bought her for a goodly number of cattle, and over his concubines, at any rate, he exercised powers of life and death. Odysseus compels the faithless handmaidens to carry forth the bodies of the suitors and bids Telemachus put them to the sword; but Telemachus thinks this too good a death, and strings them up to a ship's cable in the hall, where they hang struggling like thrushes in a net.[4]

The *patria potestas* persisted in a mild form in the historical period.[5] The father was the religious and legal head of the family; he performed the family *sacra*, and represented wife, children and slaves in the courts.[1] Nor were limitations on personal liberty and responsibility peculiar to the wife, for here again woman was subject to the three obediences to father, husband or son, and failing them, to her nearest blood relation.

---

[1] At the same time Arete's position seems to have been somewhat exceptional, for Alcinous honoured her as no other woman in the world is honoured of all that nowadays keep house under the hand of their lords (*Odyssey*, VII, Butcher and Lang Tr., p. 105). Was this an explanation needed by the audience of a later age ?

[2] *Iliad*, VI. 429, 430.

[3] Yet the wife might resent this. Laertes bought Eurycleia in her youth for twenty oxen and honoured her equally with his wife, " but he never lay with her, for he shunned the wrath of his lady " (*Odyssey*, I. Tr. Butcher and Lang, p. 15). Deianeira lets Herakles have as many concubines as he chooses, but cannot tolerate Iole as a wife in her house (Wilamowitz-Möllendorf, *Staat und Gesellschaft*, p. 34).

[4] *Odyssey*, XXII. 468.

[5] The right of exposing a child was limited in Sparta by the meeting of the tribesmen (Plutarch, *Lycurgus*, 16, cited by Leist). Leist (p. 59) thinks the ἀγχιστεῖς must be meant. Exposure was forbidden by law only in isolated instances and those of the archaic period. Thebes is the most noteworthy case. In general it remained a serious factor in Greek life (Wilamowitz, p. 35). The legitimacy of the child had to be acknowledged by the kindred in order to secure its right of inheritance. The adult son was emancipated.

The sons in most cases divided the inheritance, the daughters having only a right to maintenance and dowry. But what property women had remained theirs during marriage, and in some states they even had the right of management.[2] In early times the father might sell his daughters, or brothers their sisters, when under their guardianship. This right was abolished by Solon except in the case of unchastity,[3] but a father retained the right of controlling his daughter and even of disposing of her by will,[4] or of giving his son, while a minor, in adoption to another family.[5] There could be no legitimate marriage without an assignment of the bride by her guardian.[6] The wife passed into the husband's family, and was separated from her own kin and their *sacra*. At Athens she might be divorced on payment of the bride price, while on her side she could only obtain a divorce by the sanction of the archon.[7] At Sparta, where, in some respects, *e.g.* in regard to property, she had a higher position,[8] it seems that looser relations prevailed. Brothers might share a wife in common, and wife-lending was recognized, whereas at Athens the punishment of adultery was enforced.[1] Monogamy prevailed,[2] but concubinage was legally recognized, provided that the handmaiden did not reside in the same house with the legal wife. The concubine's children might be legitimated by adoption, and might then enter the phratry, whereby they acquired all the privileges of citizenship.[3]

---

[1] The Athenian woman could follow no suit of a value exceeding a medimnos, except through a guardian. The wife had very limited powers of alienation without the husband's consent.

[2] Busolt, *Handbuch der Klassischen Altertumswissenschaft*, 19, 20.

Here Dorian and Ionian custom stand in contrast. From the preoccupation of the Spartiate with military exercises it followed that his wife was left in charge of the land, and she might inherit and hold estates as her own. The Athenian woman seems only to have received "movables" as her dowry (Wilamowitz, pp. 34, 94). The land in Attica belonged to the family. Hence if the daughter inherited she must marry her nearest kin—sons of the same father not excluded (Wilamowitz, 33, 34).

[3] *ἔτι δ’ οὔδε θυγατέρας πωλεῖν οὔτ’ ἀδελφάς δίδωσι πλὴν ἂν μὴ λάβῃ παρθένον ἀνδρὶ συγγεγενημένην* (Plut., *Solon*, 13, 23, cited by Busolt, *loc. cit.*).

[4] Letourneau, *La Femme*, 416.

[5] Busolt, p. 19. According to Leist (p. 62) he had practical, but not legal control over the son's marriage.

[6] At any rate at Athens (Busolt, 210). The *ἀγχιστεῖς* (relations to the fourth degree on both sides) had to see that the orphan heiress was married, and her nearest male relation (after her brothers) had the right of marrying her, and correspondingly the duty of so doing or of finding a husband for her (Busolt, 20; Leist, 40, 47).

[7] Letourneau, *La Femme*, 423. At Sparta divorce for sterility seems to have been expected at any rate of a king (Herodt., v. 40).

[8] According to Aristotle two-fifths of the land of Sparta had come into the hands of women by inheritance and bequest in his time, and the Spartiate women, having successfully resisted the attempt of Lycurgus to impose on them the same discipline as the men accepted, enjoyed a state of liberty which in Aristotle's view amounted to licence, and was disastrous to Sparta (*Politics*, ii. 1269 B, 1270 A).

But the woman, though under ward, was certainly not regarded as a chattel. Probably Aristotle expressed the ordinary Greek view accurately enough when he said that a man should rule his slaves as a despot, his children as a king, and his wife as a magistrate in a free state. Yet it was a Greek poet who first let women speak for themselves and not in terms of male sentiment, and a Greek thinker who first frankly argued the case for the free admission of women to all the duties and rights of man. Plato's position differs from that of his modern successors in that he insists rather on women's duties than on their rights, more on what the state loses by their restriction to the family circle than on the loss to their own personality. Further, though he had the experience of Sparta to go upon, his own teaching was too much associated with polemics against the family and with a fanciful ideal of communism to be taken quite seriously. On the other hand, Aristotle summed up the whole philosophy of the ancient world, of the East, and perhaps the prevailing sentiment in modern Europe, when, discussing those who are fit to bear rule and order the affairs of men, he says that a slave does not possess that power of deliberation (*τὸ βουλευτικόν*) which is the basis alike of self-government and of the government of others. A child possesses it but imperfectly. A woman possesses it, but in her it is without authority (*ἄκυρον*). After all, the Greeks did little to develop it. There appear to have been no regular schools for girls at Athens,[1] and it was only the courtesan of the higher class who was a fit helpmeet mentally for Pericles or capable of sustaining a conversation with Socrates.[2] Xenophon's ideal wife is a good housekeeper, like her of the Proverbs.

---

[1] By the Solonian legislation the husband who concealed his wife's adultery was punished with ἀτιμία. Yet the punishment of the adulterer was left in the husband's hands. If caught *flagrante delicto* he was absolutely at the husband's mercy. In any case he could be imprisoned at the husband's pleasure, and was released on payment of a fine (Letourneau, p. 422). The wife was not killed, but divorced (Leist, p. 300). For an instance of wife-lending at Athens, Letourneau cites the case of Kimon (Letourneau, p. 415).

[2] Anaxandrides, king of Sparta, declined to divorce his barren wife, but consented to take a second. This was regarded as quite un-Spartan (Herodt., v. 40). Bigamy was not a punishable offence, but might be a ground of divorce. It was actually legalized at Athens after the losses of the Sicilian expedition (Zimmern, *Greek Commonwealth*, p. 334). Supernumerary wives in foreign parts are an occasional theme of the New Comedy (Wilamowitz, p. 34).

[3] Busolt, *op. cit.*, p. 201.

8. The modern European marriage law has three roots—Roman Law, Primitive Teutonic custom, and the Christian doctrine of marriage; but it has been largely remodelled in the modern period under rationalizing influences. It cannot be studied statically, but has a long, varied and interesting history, of which an attempt will be made here to give the briefest possible outline. This history starts with the early Roman family, organized as it was under the highly-developed *potestas* of the father. All the children are the father's, and in law he can dispose of them at pleasure.[3] He can chastise them, sell them into slavery, and even put them to death (*jus vitæ necisque*).[4] Before exercising this supreme power he has, it is true, to consult the council of relations, but he is not bound by their judgment. In short, the paternal power is nowhere more strongly developed, nor does the position of wife and children anywhere approach in law more nearly to that of slaves, owned by the paterfamilias, and except as a matter of grace, incapable of owning anything themselves.

Into the family thus constituted a wife passed on her marriage. The marriage might be accomplished by either of two forms, and it might also be made valid apparently without any form at all. The first form was *confarreatio*, in which the essential feature was the eating by both bride and bridegroom of a cake—an act of the kind which we call symbolic, but which to primitive man is rather magical, actually efficacious in establishing a unity of the man and woman. The second form was called *coemptio*, and was of the nature of a formal sale, almost certainly, in the light of what we know of other peoples, preserving the memory of a real purchase of the wife by the husband, which as anything but a form had already fallen into disuse when history begins. Both these forms transferred the wife from the power (*potestas*) or hand (*manus*) of her father into that of her husband, to whom she became as a daughter. For all purposes, sacred and profane, she passed from the one family to the other.[1] But just as inanimate property, which normally passed from hand to hand by a special ceremony of transfer, might acquire a new owner by long unchallenged possession and use, so was it also with human property. The woman who without either of the two ceremonies mentioned was given by her father to a man and lived with him as his wife for a whole year without interruption became in law his wife by use (*usus*) and passed as completely *in manum mariti* as if she had eaten with him the sacred cake.

---

[1] Here the Spartans were more liberal, as they admitted women to the gymnasia (Busolt, ii. 158).

[2] Mr. Zimmern, after weighing the arguments of Wilamowitz (*Arist. und Athens*, ii. 100), adheres to the traditional view of the high qualities and position of women like Aspasia (*op. cit.*, p. 332).

[3] Exposure, however, if the law attributed by Dionysius (ii. 15, Bruns, p. 7) to Romulus is correct, was limited to female infants and required the consent of the neighbours—*ἅπασαν ἄρρενα γενεὰν ἐκτρέφειν, καὶ θυγατέρων τὰς πρωτογόνους.* No child was to be killed under three years—*πλὴν εἴ τι γένοιτο παιδίον ἀνάπηρον ἢ τέρας εὐθὺς ἀπὸ γονῆς. ταῦτα δ' οὐκ ἐκώλυσεν* (Ὁ Ῥωμύλος) *ἐκτιθέναι τοὺς γειναμένους, ἐπιδείξαντας πρότερον πεντε ἀνδράσι τοῖς ἔγγιστα οἰκοῦσιν,* etc.

[4] Bruns (p. 7), quoting Dion. ii. 26. (Ὁ Ῥωμύλος) *ἅπασαν ἔδωκεν ἐξουσίαν πατρὶ καθ' υἱοῦ, καὶ παρὰ πάντα τὸν τοῦ βίου χρόνον ἐάν τε εἴργειν ἐάν τε μαστιγοῦν, ἐάν τε δέσμιον ἐπι τῶν κατ' ἀγρὸν ἔργων κατέχειν, ἐάν τε ἀποκτιννύναι προαιρῆται,—ἀλλὰ καὶ πωλεῖν ἐφῆκε τὸν υἱὸν τῷ πατρί,—καὶ τοῦτο συνεχώρησε τῷ πατρί, μέχρι τρίτης πράσεως ἀφ' υἱοῦ χρηματίσασθαι.—μετὰ δὲ τὴν τρίτην πρᾶσιν ἀπήλλακτο τοῦ πατρός.*

All these three modes of marriage were in existence at the time of the drawing up of the XII Tables, and whichever of them she chose, the woman passed into the family and into the power of her husband. Yet her position differed in two essential respects from that of the Oriental wife. She was her husband's only wife. At no period of Roman history are there any traces of polygamy or concubinage.[2] And not only was she the sole wife, but the tie which bound her to her husband was difficult to break and rarely broken. It is true that each form of union could be undone by a certain prescribed ceremony—*confarreatio* by *diffarreatio*, *coemptio* by *remancipatio*. But these were resorted to rarely, and it would appear only for grave offences, the council of relations being first called in to give judgment.[3]

---

[1] Cf. on the religious marriage Dion., *γυναῖκα γαμετὴν τὴν κατὰ γάμους ἱεροὺς συνελθοῦσαν ἀνδρὶ κοινωνὸν ἁπάντων εἶναι χρημάτων τε καὶ ἱερῶν* (Bruns, p. 6).

[2] The concubinate of which we hear in Roman law is a form of union, bereft of some of the civil rights of marriage, not the relation of a married man to a secondary wife.

[3] Bryce, *Studies in Jurisprudence*, vol. ii. p. 403. The offences for which, according to Dionysius, ii. 25 (Bruns, p. 7), she was brought to trial before a council of relatives were, however, punishable with death. They were adultery and wine-drinking (*ταῦτα—οἱ συγγενεῖς μετὰ τοῦ ἀνδρὸς ἐδίκαζον*). The grounds for divorce stated by Plutarch are poisoning the children, the use of false keys, and adultery. Divorce for any other reason was punished by confiscation of property. The wife could not leave her husband in any case. (*γυναικὶ μὴ διδοὺς ἀπολείπειν ἄνδρα, γυναῖκα δὲ διδοῦς ἐκβάλλειν ἐπι φαρμακείᾳ τέκνων ἢ κλειδῶν ὑποβολῇ καὶ μοιχευθεῖσαν· εἰ δ' ἄλλως τις ἀποπέμψαιτο, τῆς οὐσίας αὐτοῦ τὸ μὲν τῆς γυναικὸς εἶναι, τὸ δὲ τῆς Δημήτρος ἱερὸν κελεύων*. Bruns, p. 6; cf. Girard, p. 154.) Divorce by the husband was recognized in the XII Tables. The husband takes the wife's keys

It does not appear that the wife had any means of repudiating the husband, or of emancipating herself from his *manus*. In practice marriage was so nearly indissoluble that the divorce of his wife by Spurius Carvilius Ruga in 231 B.C. was declared to be the first instance[1] known since the foundation of the city. On the other hand, it must be remembered that the unfaithful wife might be put to death without trial, and that the husband who had other good causes of complaint would be supported by the family council in executing or in repudiating her.[2]

9. Such was the primitive Roman marriage with the *manus*. But even in the days of the XII Tables a wholly different union had made its appearance. If the enjoyment of property was broken for awhile before the year was out, no title to it arose out of the usufruct. This idea was applied to marriage by *usus*, and already in the time of the XII Tables we find that if the cohabitation was broken for three nights in every year, the wife did not become the property of the husband. When or how it became a custom to convert this breach of cohabitation into a system, and so establish a form of marriage in which the wife did not pass into the *manus* of the husband, we do not know. What is certain is that this new form of free marriage rapidly ousted its older rivals. The bride now remained in her father's power, she was still a member of her own family, and by consequence had no position in that of her husband. Subject to the nominal control of her father or her guardian, she thus acquired complete control of her own property, and became, in fact, her own mistress. She was not in theory a free woman unless emancipated. She was only free from her husband. But it need hardly be pointed out that the practical control of relations with whom as a married woman she no longer lived was not likely to be a very serious matter, and in point of fact, where it was felt to be irksome, it was from time to time limited by law. Thus the father had naturally, as a part of his *potestas*, the right to break the marriage at will. But this logical application of the paternal power was abolished

---

away and turns her out of the house. "Illam suam suas res sibi habere jussit, ex XII tabulis, claves ademit, exegit" (Cic. Phil. ii. 28. Bruns, p. 22).

[1] Ruga's wife was divorced for sterility, and Lord Bryce takes the sweeping statement of the authorities to mean that it was the first instance of a divorce in which no crime was alleged (ii. 403).

[2] At the same time, if Plutarch (Rom. 22) is to be trusted, it was a religious offence to sell her as a slave (*τὸν δ' ἀποδόμενον γυναῖκα θύεσθαι χθονίοις θεοῖς* (Bruns, 7). In this point she enjoyed a material advantage over the children.

under the Antonines, or restricted to cases where there was grave cause for its exercise.[1]

On the other hand, the *tutela* was a reality for unmarried women, and the Roman law never seems to have fully acknowledged that the consent of the adult woman, and her consent alone, was the one necessary condition to her marriage. Originally, indeed, the consent of the parties does not seem to have been required at all. This would be all in accordance with primitive ideas. But here again the law was modified as time went on, and the consent of the woman, as well as the man, became a normal and, in some cases, a legally necessary condition.[2] Further, with the general emancipation of women the necessity for a guardian appears to have gradually died away.[3] Hence the Roman matron of the Empire was more fully her own mistress than the married woman of any earlier civilization, with the possible exception of a certain period of Egyptian history, and it must be added, than the wife of any later civilization down to our own generation. Practically independent of her father, she was legally independent of her husband. She could bring an action against others and, with some limitations, against him.[4] She could hold property and dispose of it freely.[1] On the other hand, being separated from his family, she does not succeed to his property if he dies intestate, nor do her children succeed to her, nor she to them. So much followed from the strict theory of marriage without the *manus*, though here, as elsewhere, natural feeling had its way, and practical rules were introduced by the Prætorian legislation to prevent consequences which would seem harsh to the temper of the time.

---

[1] The separation of a wife from her husband by her father was forbidden by Antoninus Pius, but was permitted "magna et justa causa interveniente" by his successor (Sir F. Jeune, *Ency. Brit.*, art. "Divorce," p. 471; Girard, p. 155). The son also acquired the right to emancipation in case of ill-treatment (Girard, 183).

[2] The consent of the parties was, of course, required if they were *sui juris.* On the other hand, by the strict logic of the law, if either was in *tutela*, and this would be the normal case with a girl (and even with a grown-up woman), the affair would have been one for the guardians alone. Thus Ulpian (v. 2) says, "Consentiant si sui juris sunt, aut etiam parentes eorum si in potestate sunt" (cited by Girard, p. 147 note). The *Lex Julia* (A.U.C. 736) gave an appeal from the guardians, if they refused consent, to a court. Further, the best jurists, including Ulpian himself, held the consent of the parties to be necessary as well as that of their guardians. "Nuptiæ consistere non possunt nisi consentiant omnes; id est qui coeunt, quorumque in potestate sunt" (*Digest*, XXIII. ii. 2). With this, however, we must read: "Sed quæ patris voluntati non repugnat consentire intelligitur. Tunc autem solum dissentiendi a patre licentia filiæ conceditur si indignum moribus vel turpem sponsum ei pater eligat" (*Just Digest*, XXIII. i. 12. Cited in Viollet, *Droit Civil Français*, p. 404).

[3] Originally all women were in tutelage. "Veteres voluerunt feminas, etiamsi perfectæ ætatis sint—in tutela esse—exceptis virginibus vestalibus, quas . . . liberas esse voluerunt; itaque etiam lege XII Tabularum cautum est" (Gaius, i. 144, 145, in Bruns, 21). On the extinction of the *tutela*, see Girard, pp. 196 and 213.

[4] In case of adultery the husband could originally kill the wife. The *Lex Julia* compelled him to prosecute, the punishment being *relegatio.* The same law punished fornication with women of rank (Girard, *Manuel elémentaire du Droit Romain*, 160, 17

These changes naturally affected the stability of marriage. We have seen that under the old law divorce was rare and difficult, but the revolution effected in marriage by the disappearance of the *manus* was nowhere more conspicuous than in its effect upon the permanence of the marriage tie. By the newer form of marriage neither did the wife pass into the husband's family nor the husband into the wife's family. They remained distinct persons, distinct individualities, and as they freely entered into the marriage relation, so could they freely leave it. Divorce, in short, as in so many primitive tribes, stood freely at the choice of either party. In the best time of the Republic divorce without adequate cause incurred penalties, a pecuniary fine, or, still more serious, the *nota censoria*. But with the growth of the new form of marriage opinion rapidly changed, and, as Lord Bryce points out, we find at the close of the Republic not only Pompey, but "such austere moralists as Cato the Younger and the philosophic Cicero" putting away their wives. The reader of Cicero's letters who is unacquainted with the Roman law of divorce will perhaps remember the shock of surprise with which, after becoming well acquainted with Terentia from many allusions he suddenly finds Cicero calmly referring to his divorce and re-marriage. At this period divorce had, in fact, become as commonplace an incident of life as marriage itself.

How far the freedom of women had the demoralizing results which have been generally attributed to it by those whose business it has been to paint the Roman Empire in the darkest colours, is a matter on which the best authorities do not speak with confidence. It must be remembered that our accounts of Roman social life are drawn in part from satirists like Juvenal, or satirical historians like Tacitus, and that we should be as far astray in taking their description as an impartial account of the society in which they lived as we should be if we accepted the picture of our own social life as it could be painted for us by some preacher of reform, or some contemporary censor of morals. The satirist has a great function in the world, but it is not that of supplying the historian of manners with material ready for use without analysis. Other sources are the writings of Christian fathers, who from a different point of view were even more prone to denounce the wickedness of the world as they found it.

---

[1] Girard, p. 159. The dos or dowry brought by the wife from her own family's resources to the maintenance of the joint life passed originally to the husband; but while he continued to administer it, his right over it became more and more restricted in favour of the wife, so that the jurists (*e. g.* Ulpian) speak of it as being her property, and this is recognized by Justinian, who gives her a right to reclaim it on the dissolution of the marriage from whatever cause (Girard, pp. 922–926).

The very fact that the Romans took so serious a view of feminine profligacy militates against the belief that the corruption had gone quite so deep as is generally supposed. Lucius Piso declared that modesty had vanished since the censorship of Messalla and Cassius in 154 B.C.[1] Yet we have the testimony of Velleius that in the proscription of the Second Triumvirate, while the sons were never faithful and freed-men only sometimes so, the wives could be trusted always. The freedom of divorce was abused, as it is in the present day in America. According to Seneca there were women who reckoned the years not by the consuls, but by their husbands, but this, again, is obviously satire. On the other hand, there are instances of three, four, or five wives, and, again, of three to five husbands. A marriage of forty-one years is recorded as unusually long, and in this case the wife had urged divorce and re-marriage upon her husband after the death of their daughter, for the sake of getting children. This, however, is remote in sentiment from anything like profligacy, and connects itself rather with the primitive idea of the necessity of children. The literature of the time has stories of faithful wives as well as of profligate women to record—stories of wives accompanying their husbands in suicide, dying with them in proscriptions, or going with them into exile. Every one knows of Arria, who thrust the dagger first into her own bosom, and then offered it to her husband, with the words, "Pæte, non dolet." But we do not all know that she became a kind of heroine of the time, and upon a gravestone in Anagnia is addressed along with Laodamia by a woman who asks her to receive her soul.[2]

The evidence of the tombstones, which in all ages bear a singular family resemblance, shows that the domestic ideal held sway under the free manners of imperial Rome, as under the masculine despotism of the East or the sentimentality of the West. A panegyric on Murdia in the second half of the first century says all gravestones of women must be alike, "because their virtues admit of no heterogeneity, and it is enough that all have shown themselves worthy of the same good report." "All the greater renown has my dearest mother won, who has equalled and in no way fallen behind other women in modesty, rectitude, chastity, obedience, household work, carefulness and loyalty." Another inscription says, "She was of pleasant address and noble gait, took care of her house and span." In another, the husband has sworn not to take another wife. Another, "I await my husband"; another, "Never have I experienced a pain from thee, except through thy death."

---

[1] Friedländer, *Sittengeschichte Roms.*, i. 475. Friedländer's whole discussion (pp. 475–507) is instructive, if somewhat indecisive. The judgment of Professor Dill, whose work has appeared since the above was written, is more clearly favourable (*Roman Society*, pp. 77, 79, 145, etc.).

[2] Friedländer, i. 514.

Upon the whole, the Roman matron would seem to have retained the position of her husband's companion, counsellor and friend, which she had held in those more austere times when marriage brought her legally under his dominion.

10. To understand how Roman marriage became modified in the Middle Ages we must retrace our steps and hark back to the two other influences mentioned at the outset. The first of these need not detain us long, for the primitive law of the Germanic tribes which overran the Roman Empire closely resembled the early law of the Romans themselves. The power of the husband was strongly developed; he might expose the infant children, chastise his wife, dispose of her person. He could not put her to death, but if she was unfaithful he was, with the consent of the relations, judge and executioner.[1] The wife was acquired by purchase from her own relatives without reference to her own desires,[2] and by purchase passed out of her family. She did not inherit in early times at all, though at a later period she acquired that right in the absence of male heirs. She was in perpetual ward, subject, in short, to the Chinese rule of the three obediences, to which must be added,

---

[1] Conversely the adultery of a man is no offence against his own wife, but only against another husband. The proprietary view appears strongly in the old English law. "If a freeman lie with a freeman's wife let him pay for it with his wergild, and provide another wife with his own money"—*i. e.* to replace his mistress who has been slain by her husband (Howard, *Matrimonial Institutions*, ii. 35).

[2] Whether it was the woman or the guardianship over her which was technically sold is a fine legal point, on which a host of authorities may be seen arrayed on both sides in Howard, i. 260, 261. The only ethical points in question are (1) whether her consent was necessary; (2) what rights she enjoyed when sold.

as feudal powers developed, the rule of the king or other feudal superior.[1] And the guardianship or *mundium* was frankly regarded in early law rather as a source of profit to the guardian than as a means of defence to the ward, and for this reason it fetched a price in the market, and was, in fact, saleable far down in the Middle Ages. Lastly, the German wife, though respected, had not the certainty enjoyed by the early Roman matron of reigning alone in the household. It is true that polygamy was rare in the early German tribes, but this, as we have seen, is universally the case where the numbers of the sexes are equal. Polygamy was allowed, and was practised by the chiefs.

This primitive marriage system came into contact not only with the Roman Law, but with the still more powerful influence of the Church. The Church regarded marriage as a concession to the weakness of the flesh. It is not a sin, and those who denounce it as such are severely reprobated. Nevertheless it is of the nature of a hindrance in spiritual duties. It is incompatible with the performance of the sacraments, and thus continence is enjoined on priests. It was, indeed, only after a long struggle that the celibacy of the priesthood was established as a law of the Roman Church. Such a prohibition was mooted at the Council of Nice, but not carried, while by the rejection of the proposal at the Sixth Council the Eastern Church escaped from this burden altogether. Nor was it till the time of Hildebrand that it became the definitive rule in the West. With regard to the laity, the chief concern of the Church was to save souls by preventing the deadly sin of fornication. Hence came several results; on the one hand, the form of marriage was reduced to its simplest possible terms. The mere statement of each party that they took one another as spouses was deemed sufficient, providing that the mutual pledge referred to the present (*per verba de præsenti*).[2] Even witnesses were not necessary, though, of course, they were in practice required in order to prove that the pledge had been made. It was the duty of the parties to have a wedding ceremony in church—in fact, it became a breach of law and morals to marry by any other form, but the omission of such a ceremony did not affect the validity of the marriage.[3]

---

[1] Waitz, *Verfassungsgeschichte*, i. 57–60.

[2] At least from the time of Alexander III. The controversies as to the exact condition of a valid marriage (*e. g.* as to whether consummation was required, as Gratian maintains, to complete the marriage) need not trouble us here (Howard, *op. cit.*, i. 336, 337. *Decret. Grat.*, 1062 seq.).

[3] For the stages by which the ecclesiastical ceremony grew up, and was made legally obligatory, see Howard, i. chap. vii. Lay marriage and

In close connection with this law as to the form of marriage is the position to which the Church was gradually led, and which it finally maintained with great firmness, that the consent of the parties alone is the only thing necessary to constitute a valid marriage. Here the Church had not only to combat old tradition and the authority of the parents, but also the seignorial power of the feudal lord, and it must be accounted to it for righteousness that it emancipated the woman of the servile as well as of the free classes in relation to the most important event of her life.[1]

A third consequence was that the marriage, once concluded, was indissoluble; it was deadly sin for one man to have to do with more than one woman, or for one woman with more than one man. That being so, divorce in the full sense became at once an immorality; there might be separation for grave cause, but even that is jealously restricted as giving occasion for sin. There might also be annulment of marriage, which is simply

---

clandestine marriage, though illegal, remained valid down to the Council of Trent in Catholic countries. In England, except for the period of the Commonwealth, they were valid down to the passing of Lord Hardwicke's Act in 1753 (Howard, i. 351 and 446, etc.). For the scandalous Fleet marriages which made the Act necessary, see *ib.*, 437 seq.

[1] The early Fathers held by the consent of the parents, and Ambrose apparently thinks that the whole matter should be left to them. He quotes with approval Euripides—

> *νυμφευμάτων μὲν τῶν' ἐμῶν πατὴρ ἐμὸς*
> *μέριμναν ἕξει, κ'οὐκ ἐμὸν κρίνειν τάδε*

and says, "ergo quod et ipsi philosophi mirati sunt servate virgines" (*Decretum Gratiani, Corpus Juris Canonici*, 1124).

In Gratian it is admitted that the "paternus consensus desideratur in nuptiis, nec sine eo legitimæ nuptiæ habeantur," and he quotes "illud Evaristi Papæ: Aliter non fit legitimum conjugium, nisi a parentibus traditur" (p. 1123). But the consent of the parents was incompatible with the self-marriage of the parties, which the Church held necessary for the avoidance of fornication. Accordingly Gratian's own view is that consent makes marriage (pp. 1062, etc.), though he has difficulty in reconciling this with the further condition that consummation should have taken place. With these difficulties we are not concerned here. The question of parental assent was decided by Innocent III., who declared it unnecessary (Viollet, p. 406. See Howard, vol. i. p. 336, etc.). The Decretals of Gregory IX. are perfectly clear, "Matrimonium solo consensu contrahitur" (*Corpus Juris*, p. 660).

The Council of Trent, while compelled by the abuses of private marriages to declare marriage void if not performed by a priest, anathematizes those who maintain that marriage without the consent of the parents is invalid (Acts of Council of Trent in *Corpis Juris*, p. 71). It is, of course, not implied that the father has no right of veto, but only that the marriage, once consummated, is indissoluble. But further, the daughter who disobeyed her father's order to marry was protected by the Church. She was declared free of the sin of ingratitude, and is therefore not to be disinherited (Owen, *Institutes of Canon Law*, p. 133).

a recognition that what purported and was supposed to be a marriage, never was a lawful union at all, but there could be no putting asunder of those whom God had once joined together.[1]

Lastly, the moral consequences of any violation of the marriage law were held by the Church to affect the man no less than the woman. And though the Church never succeeded in converting the world to this view, it must be noted here as a departure hardly, if ever, paralleled in the history of ethical thought before the rise of the spiritual religions.[2]

The whole domain of marriage was in the end conquered by the Church, but the victory was only gradual. Polygamy remained among the Franks in the days of Chilperic and Dagobert, the latter of whom had three queens, and in some districts of France, such as Bigorre, concubinage lasted up to the fifteenth century. But monogamy speedily became the rule everywhere.[3] In the matter of the bride's freedom the struggle was more prolonged, and two voices were sometimes heard within the Church itself, but from the ninth century onwards the consent of both parties was at least supposed, and by the decision of Innocent III. the consent of the father ceased to be even a necessary condition. The feudal power of disposing of widows and orphans was also slowly worn away. In 614 we find it repudiated by Clothaire II., yet it survived, and in 1232 we find the Emperor resigning his right in this direction at Frankfort.[4] Generally speaking, the families of serfs required authorization to marry, and in England no mark of servile tenure was more resented than the payment of the merchet, or fine on marriage, which implied that the right of marrying was at the lord's discretion.[1] In 1408 we find the Parlement of Paris contesting the right of the Duc de Berry to force a girl of eight into marriage. The king's right was exercised frequently by Louis XI., and Louis XII. forced Alain d'Albret to consent to the marriage of his daughter to Cæsar Borgia. The Council of Trent wholly forbade seignorial interference, yet complaints are heard of it as late as 1576 and 1614, and in 1623 it was necessary for Philip IV. of Spain to forbid it in Franche-Comté. The royal right was still exercised in France in the seventeenth century. In the eighteenth it died away, save that the king's consent was still required in the case of princes of the blood and grandees. Napoleon made a last effort to revive it.[2]

---

[1] This was the final view of the Church, reached by slow degrees. The deliverances of the New Testament being uncertain, the views of the early Fathers waver, but nearly all agree that divorce is forbidden except for "fornication." This term is, however, sometimes given a wider spiritual sense so as to include idolatry and even covetousness. But Augustine (who had at first admitted the wider view) came to regard adultery as the only cause of separation, refused to allow any difference between man and woman, and allowed no dissolution of the nuptial bond even for adultery. This view was accepted by the Council of Carthage in 407. In its final form the Canon Law allowed separation for (1) adultery, the wife having an equal right of action with the husband; (2) "spiritual" adultery, which came to mean apostasy, and perhaps compulsion of one party by the other to commit crime; (3) cruelty (Howard, ii. 53).

[2] Gratian quotes Ambrose, who is very precise: "Omne stuprum adulterium est, nec viro licet quod mulieri non licet. Eadem a viro quæ ab uxore debetur castimonia" (*Corpus Juris*, 1128).

[3] Viollet, p. 388.

[4] Viollet, p. 410. As to the authority of feudal superiors, the Council of Trent finds that in the sixteenth century it is still common for secular lords to compel men and women in their jurisdiction to marry against their will, and denounces the practice *sub anathematis pœna* "quum maxime nefarium sit matrimonii libertatem violare" (Council of Trent, p. 74). From an early period the Church had given sacramental sanction to the concubinate, *i. e.* marriages of the unfree, or between unfree and free (Howard, i. 276). On the other hand, the sacramental view enables the Church to justify

Nor did the Church get its own way with regard to divorce at one blow. Constantine did not attempt to prohibit divorce, but confined himself to the imposition of pecuniary penalties according to the cause. But Theodosius and Honorius in 421 carried the matter a step further, prohibiting re-marriage in case either husband or wife divorced the other party without sufficient reason. The next step was the abolition of divorce by mutual consent by Justinian; but this step proved unpopular, and the law was repealed by Justin, who substantially re-enacted the Theodosian code; and the Church did not get its way in the Byzantine Empire until the reign of the Emperor Leo.[3]

---

the dismissal of a mistress for a wife of free status, "Ancillam a toro abjicere et uxorem certæ ingenuitatis accipere non duplicatio conjugii sed profectus est honestatis" (Pope Leo, in *Decret. Grat.*, p. 1123). This was to invest the most callous and heartless form of wickedness with an air of piety.

[1] Connected with the merchet was the fine for incontinence payable to the lord, since in the loss of virginity there was a risk that the chance of marriage might be lost and therewith the lord's merchet might never accrue. Yet the merchet appears to have been sometimes paid by freemen, and not universally by serfs (Vinogradoff, *Villeinage in England*, p. 153). For a striking picture of the arbitrary marriage of serfs by a Russian proprietor in the modern period, see Kropotkin, *Memoirs of a Revolutionist*, vol. i. p. 61.

[2] Viollet, p. 410–414.

[3] By the law of Constantine, the wife could divorce her husband for murder, the preparation of poisons, or the violation of a tomb. If she divorced him for any other cause, she forfeited her dowry and was liable to deportation. The husband could divorce the wife for adultery, the preparation of poisons, and for acting as a procuress. If he divorced her for any other cause he forfeited the dowry, and if he married again, the first wife could take the dowry of the second. The legislation of Theodosius

In Western Europe the conquest of the barbarians was gradual. In the eighth and ninth centuries the capitularies absolutely prohibited divorce, yet exceptions were admitted subsequently here and there. In the Canon Law itself traces of a more lenient view appear.[1] Dissolution of marriage for impotence is not in accordance with the Roman custom, but, says a rescript of Alexander III., "if the custom of the Gallic Church so had it, we will patiently endure it."[2] Moreover, a case is recorded in which a husband, having been absent for more than ten years and refusing to return, a bishop had pronounced him divorced, and declared the wife free to marry. Though this decision is not confirmed, and nothing apparently came of it, yet it is held, in view of the bishop's sentence, that the children of the wife in this case are to be deemed legitimate.[3] All these doubts and exceptions were swept away by the Council of Trent, and to the present day in countries dominated by the Canon Law there exists no divorce dissolving the *vinculum matrimonii* by the ordinary law.[4] The Pope, of course, having the power of the

---

and Honorius in 421 allowed the wife to divorce for grave reasons, including crime, but if she divorced her husband for moderate faults, including "criminal conduct," she forfeited her dowry, became incapable of remarriage and liable to deportation. The husband, if divorcing for serious crime, retained the dowry; if for "criminal conduct," he did not retain it but could marry again; if for mere dislike, he forfeited the common property and could not marry again. In 449, after an experimental restoration of the law of the early empire, Theodosius specified twelve offences (including cruelty and adultery) for which a wife could divorce her husband. The same *mutatis mutandis* applied to the husband, but he could further go upon the ground that his wife dined with men without his knowledge, left home at night without adequate cause, or frequented the circus, etc., after being forbidden to do so. If he divorced her for any other reason, he forfeited the dowry and property brought into the marriage. If she did so she suffered the same penalty, and could not marry again for three years.

Justinian took the further step of abolishing divorce by mutual consent under penalty of being immured in a monastery, and he re-enacted the Theodosian law of divorce by one party with some modifications of detail. Divorce by mutual consent was re-introduced by Justin and finally abolished by Leo (Bryce, ii. 408, and Howard, ii. 28–33).

[1] Still more clearly do the Penitentials of this period show the compromise necessary to adjust the Canon Law to Germanic custom (Howard, ii. 45).

[2] *Decret. Greg.*, 705. In other chapters divorce for impotence is recognized under conditions. In Gratian's view it would prevent the completion of marriage (for *conjugium confirmatur officio*), but if occurring after consummation, would not be a ground of dissolution (1149).

[3] *Decret. Greg. IX.*, *Corpus Juris*, p. 713.

[4] On the other hand, down to the Council of Trent, the recognition of clandestine marriages on the one hand, and the complicated system of restrictions on the other, made the annulment of marriage only too easy. On the whole, the marriage tie during the Middle Ages seems to have been almost as loose in practice as it was rigid in theory.

Keys, can override all laws, but this does not affect the general principle, nor does it bring relief to those who are without the means of setting the spiritual machinery in motion.

11. Both as to the tutelage of women and as to the general power of the father the early Germanic law in large measure reproduced the features of early Rome. Both were modified by the impact of civilization, of the civil law and of Christian influences. But they were modified in different ways. The father's power decayed more rapidly and more completely than the husband's, and while the unmarried woman became personally free, the wife remained *sub virga mariti*.

The primitive German father had the power of life and death over his children.[1] At any rate he could expose them before they had taken food,[2] and he could sell his children certainly, and in most tribes probably his wife also, into slavery. Even in the seventh century the Church has to admit the right of a father to sell a son under seven into slavery.[3] Down to the ninth century the husband was possibly within his rights in killing his wife for a "good" reason.[4] The Lombard law ran, "Non licet eam interficere ad suum libitum sed rationabiliter," and at Worms, in the eleventh century, witnesses were asked, "Est aliquis qui uxorem suam absque lege aut probatione interfecerit?"[5] The sale of children had been prohibited in the Empire by Diocletian, but the law was found to lead to infanticide, and it was again allowed by Constantine, though at birth only, and that with an option of redemption. It was prohibited by the laws of the Visigoths and by the Carlovingians, but instances in which it occurred are quoted from French law-books as late as the fifteenth century. The sale of a wife appears in the eleventh century at Cologne,[6] and in the same century Cnut had to forbid the sale of a woman to a man whom she disliked.[7]

---

[1] Waitz, *Verfassungsgeschichte*, 49.

[2] Viollet, 497, 499.

[3] Pollock and Maitland, *History of English Law*, ii. 436.

[4] Viollet, p. 500.

[5] Viollet, *loc. cit.* Even in the Canon Law the murder of a faithless wife is somewhat faintly deprecated. Gratian is at pains to show that the apparent countenance given by Pope Nicholas refers to the practice of civil law alone, but Pope Pius, whom he also quotes, merely says, "Quicunque propriam uxorem absque lege vel sine causa et certa probatione interfecerit aliamque duxerit uxorem, armis depositis publicam agat pœnitentiam" (1152). Gratian himself is clear that the murder of an adulteress is unlawful (1154).

[6] Viollet, p. 502.

[7] Pollock and Maitland, ii. 364.

While these grosser excesses of marital and paternal power died away during the earlier Middle Ages, the subjection of the wife remained. But of the wife only.[1] From the Conquest onwards the unmarried English woman on attaining her majority became fully equipped[2] with all legal and civil rights, as much a legal personality as the Babylonian woman had been three thousand years before. But the wife was still, if not the husband's slave, at any rate his liege subject. Her personality is merged in his. The law does not hold her responsible even for crimes committed in his presence, and therefore it is presumed under his influence and authority. If she kills him it is petty treason—the revolt of a subject against a sovereign in a miniature kingdom. She could not bring an action against him nor he against her. But, of course, the theory could not be pushed to its full length. The wife was human, and so, after all, were the legists, and if ill-treated she could go to the ecclesiastical courts for protection, and if the husband was obstinate they could call in the power of the secular arm.[3] The King's Court would punish him for maltreating her,[4] but the right of chastisement remained, and the history thereof, together with the whole theory of marriage thereunto appertaining, is explained with much unconscious humour by Blackstone.

"The very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband, under whose wing, protection and cover, she performs everything." Hence a man cannot grant anything directly to his wife, or contract with her, "for the grant would be to suppose her separate existence, and to covenant with her would be only to covenant with himself." He is bound to provide her with necessaries, but for anything besides necessaries he is not chargeable. She can bring no action without his concurrence, nor be sued without making him a defendant. In criminal cases she may be convicted and punished separately, but she is considered as acting under his orders, and in some felonies (though not murder) she is excused, if acting under his constraint.

---

[1] While unmarried women become emancipated, the wife remains subject to her husband's correction. In Normandy, in the thirteenth century, it is held that a man could not be prosecuted for beating his wife, slave, son, or daughter, or any one "*en sa mesgnie.*" And it is the same in other parts of France, though in Flanders the magistrates condemned a husband for beating his wife till the blood flowed. The subservience of the wife was expressed by her waiting at table, kissing the husband's knees and calling him her lord (Viollet, pp. 503–504). As to property, however, in France and some parts of Germany a doctrine of community of goods grew up in which the husband had the right of management, but the rights of the wife were considerable. And owing to the law of dower, the French wife in the thirteenth century could institute an action without her husband's consent, which at present she cannot do (Viollet, p. 293). Here, however, we touch on the indirect consequences of laws of property, rather than on customs flowing from the central conception of the position of women.

[2] Pollock and Maitland, ii. 437. The writers do not consider it clearly established that a life-long *tutela* of women ever existed in England, as among the other Germanic peoples.

[3] In 1224 a wife obtained a writ directing a sheriff to provide her with maintenance out of the husband's lands (Pollock and Maitland, ii. 435).

[4] Pollock and Maitland, ii. 436.

"The husband also (by the old law) might give his wife moderate correction. For, as he is to answer for her misbehaviour, the law thought it reasonable to entrust him with the power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or children." . . . "But this power of correction was confined within reasonable bounds, and the husband was prohibited from using any violence to his wife, 'aliter quam ad virum, ex causa regiminis et castigationis uxoris suæ, licite et rationabiliter pertinet.' The civil law gave the husband the same, or a larger authority, over his wife, allowing him for some misdeamours, 'flagellis et fustibus acriter verberare uxorem'; for others, only 'modicam castigationem adhibere' (Nov. 117, c. 14). But, with us, in the politer reign of Charles II., this power of correction began to be doubted, and a wife may now have security of the peace against her husband; or, in return, a husband against his wife. Yet the lower rank of people, who were always fond of the old common law, still claim and exert their antient privilege, and the courts of law will still permit a husband to restrain a wife of her liberty in case of any gross misbehaviour. These are the chief legal effects of marriage during the coverture, upon which we may observe, that even the disabilities which the wife lies under are for the most part intended for her protection and benefit. So great a favourite is the female sex of the laws of England."[1]

12. With Blackstone we arrive at the middle of the modern period, and we find the position of woman somewhat anomalous. In particular, the legal status of the married and unmarried woman stood in strong contrast. The gradually deepening sense of personal rights extended itself to women as well as to men, and we have seen that the Church worked along with the growing sentiment of social justice to emancipate the unmarried woman from bondage, and make her her own mistress

---

[1] Blackstone, vol. i. pp. 430–433 (edition 1765).

in the most important matter of her own marriage. Women as such, had few, if any, disqualifications as to the tenure of property, as to inheritance, and as to the full exercise of legal and civil rights.[1] Though still debarred from the professions, they were, generally speaking, competent as witnesses, could sue and be sued like a man, could inherit and bequeath freely; few, if any, relics of the *tutela* remain beyond the years of minority.[2] Further, the sentiment that first becomes marked in mediæval literature had given them a position in the esteem of man which it would be difficult to parallel in earlier thought.[3] Yet in law the whole personality of the married woman was as much as ever absorbed in that of her husband. In this direction the old conception of the right of the husband was modified rather than combated by the influences of religion and the romantic attitude to women and marriage. For if these influences emphasized the beauty of womanliness, it was a beauty which depended on meekness and self-denial. The strength of woman was in her weakness. She conquered by yielding. Her gentleness had to be guarded from the turmoil of the world, her fragrance to be kept sweet and fresh, away from its dust and the smoke of battles. Hence her need of a champion and guardian. Again, in the romantic view of marriage the two beings were united in one, and this was easily interpreted to mean that the woman was merged in the man and against him was rightless, or had a claim to protection only in the most extreme cases. Thus the law, as Blackstone with his sleek satisfaction expounds it, was not far removed from prevailing sentiment either in what it gave to women or in what it withheld. Yet Blackstone wrote two centuries after the Reformation, and the Reformation had already begun to break up the canonical view of marriage. The Reformers differed from the Romish Church in two points of capital importance. They declined to regard marriage either as a Sacrament[1] or as a concession to the weakness of the flesh. On the contrary, they considered it the most desirable state for man. Hence, on the one hand the abolition of celibacy amongst the clergy, and on the other the tendency to treat marriage as a civil contract and the revival of divorce, freedom in which latter respect was advocated by many great Protestant writers, and notably by Milton.[2] But in cutting itself free from the legal and moral structure built up by the mediæval Church, Protestantism failed to provide a clear and consistent standard of its own. The conception of the marriage relation as a civil contract was not at bottom compatible with the rigorous treatment of the most venial sexual irregularity as a religious offence of the deepest dye, and the Old Testament influences which made the husband absolute head of the family suited ill with the measure of equality already conceded to the wife.[3] Hence, even in Protestant countries legislation moved but slowly, and on the whole it was only during the nineteenth century and under new influences that the law of marriage and the position of women underwent a fundamental change. The modern conception of personal rights proved to be incompatible with the old marriage law, and indeed with the mediæval sentiment in regard to women. Applying the doctrine that moral worth and the adequate realization of character imply full responsibility, it has dismissed as a piece of false sentiment the ideal of feminine innocence shrouded from the world, has bade women take their own lives in hand, and in considerable measure broken down the barriers which debarred them from other occupations than that of marriage.[1] Within marriage it has revolutionized the position of the wife, giving back to her the personal independence which she enjoyed under the later Roman law. This change was not consummated in England until the Married Women's Property Acts of 1870 and 1882. As we have seen from Blackstone, women had acquired personal protection from the wife-beating husband during "the politer reign of Charles II.," but their property, except where protected by settlement, remained at the absolute disposal of their lord and master. This protection was a privilege of the daughters of the propertied classes. There was literally no protection for the wife of a drunkard struggling to support her children by the labour of her hands from the husband who should choose to sponge upon what she earned. Such earnings were emancipated from the husband's control by the Act of 1870. In 1882 the same principles were applied to all property; and the English law, which was the most backward in Europe, became in twelve years the most forward, Russia and Italy, strange combination, being the only other countries which fully recognized the independence of the wife's property in the absence of a settlement.[2]

---

[1] Except in relation to property the history of the position of women was broadly alike on the Continent and in England.

[2] I need not here deal with exceptions which are interesting enough as survivals. For certain disabilities in modern French law, see Viollet, p. 291.

[3] Two opposed streams of thought are discerned in the Christian teaching as to woman. On the one hand, Christianity, and particularly Catholicism, was essentially a feminine religion. Its appeal was to the womanly type, and among women at all periods it has found its heartiest response. Though debarred from the priesthood, as saints, martyrs, and virgins, women occupied a high place in the hagiology, and a woman was the mother of God. On the other hand, woman was no less certainly the door of hell, the source of temptations, the corrupter even of the saints. The filthiest view of love and marriage was taken by the ascetics and is embodied in the Penitentials. The horrible saints of the desert could scarcely bear to see a sister or a mother (Lecky, ii. 127). A fair estimate of the influence of Christianity as a whole, for which, perhaps, sufficient material has not yet been accumulated, must at least give full weight to both these tendencies. On the whole subject, see Lecky, especially vol. ii. p. 316 *seq.*

---

[1] *i. e.* not in the magical sense. In the spiritual sense, Luther regarded the word "sacrament" as necessary to express the holiness of the marriage state (Howard, i. 387).

[2] Adultery and malicious desertion, widened so as to include cruelty, were reckoned by the continental reformers generally as good causes of divorce, and it was agreed that re-marriage was allowable to the innocent party (Howard, ii. 62, 65, etc.). The English reformers followed somewhat more cautiously in the same line (*ib.*, p. 73).

[3] The influence of the Old Testament told both ways on the reformers. On the one hand, it aided them in cutting down on the whole to reasonable limits the absurd mass of restrictions on marriage which the mediæval Church had accumulated. On the other, it tended to justify a barbaric view of the prerogatives of the husband, and led Luther and other early reformers to admit polygamy and concubinage.

The fierceness of Puritan sentiment in regard to the sins of the flesh appears to combine Old Testament barbarism with early Christian condemnation of unchastity. The early reformers considered death the appropriate penalty for adultery, and in the American colonies, where Protestantism most influenced legislation, savage penalties were imposed, not only for adultery, but even for the pre-nuptial incontinence of betrothed persons, *e. g.* couples who had children born within seven months of marriage were publicly flogged. See the extraordinary collection of sentences in Howard, vol. ii. p. 169 seq. Here are records of sentences: "A. F., for having a child born six weeks before the ordinary time of women after marriage, fined for uncleanness and whipt, and his wife set in the stocks." "C. E., for abusing himself with his wife before marriage, sentenced to be whipt publicly at the post, she to stand by while the execution is performed. Done, and he fined five pounds for the trouble" (p. 186).

[1] Though there have been times in earlier history when women have, in fact, taken a prominent part in intellectual or public life (witness, *e. g.* India in Buddha's time), the systematic and reasoned insistence on the claims of women to free admission to any occupation for which they can fit themselves, seem—apart from the case of Plato—to be almost confined to the latter half of the modern period. Works in defence of women's rights appear sporadically in England, France, and Germany, from the end of the seventeenth century onwards. The first which is now at all remembered, however, is probably Mary Wollstonecraft's *Vindication*, published in 1792 (Howard, *op. cit.*, iii. 238, 239).

[2] The movement of other countries is, however, in the same direction. Sweden emancipated the wife's earnings in 1874, Denmark in 1880, Norway in 1888; the German Civil Code places the wife's earnings amongst her separate property which is beyond the husband's control. Property bequeathed to the wife is separate only when so stipulated by the donor.

Our Married Women's Property Act applies to England and Ireland only. In Scotland, by the Acts of 1877 and 1881, the wife acquired complete control of her earnings and income from personalty. But she may not dispose of the principal sum without her husband's consent. It should, however, be borne in mind that the Scottish common law gave the wife substantial claims on the husband's estate.

13. Thus the tendency of the modern marriage law is to guarantee to the wife equality of civil status, with full legal protection for her person and free disposal of her property. We are next to consider its effect upon the permanence of the marriage tie. In the previous stages of the development of marriage which have been traced we have seen it treated—

1st. As an imperfectly-organized relation which does not identify husband and wife as members of one family.

2nd. As an act of appropriation by capture, purchase or service, whereby the wife has passed into a semi-servile relation.

3rd. As a sacrament, whereby an indissoluble union was created which man could not undo.[1]

4th. In the Roman Law, and perhaps in that of Egypt, as a contract on specified terms, revocable at the will of one party or of both, or, finally, voidable under certain specified conditions.

The law of modern countries since the Reformation appears to have fluctuated between the two latter conceptions of marriage.

The French law is not easily to be compared with ours. Here and in similar codes there are mutual obligations which, in a measure, compensate the wife for a certain loss of liberty. The code states that the husband owes her protection and the wife owes him obedience. She is under an obligation to live with him, and he to receive her and furnish her with everything necessary for the wants of life according to his means and station. She has the absolute right to the one-half of everything he earns, but, on the other hand, she may not, without authority, alienate property even if it be her own, nor can she sue even if she be carrying on a trade, nor make a contract, without his authorization. On the other hand, if the authorization is unreasonably refused, she may apply for it to a court.

In one direction the primitive marital power is maintained in a modified form in some continental, particularly in Latin, countries. In France the husband still has the right to kill the paramour of his wife taken in the act. This is perhaps of the nature of a concession to the strength of passion. But further, the husband, and he alone, can denounce his wife to the tribunals for adultery, and cause her to be imprisoned for not less than three months or more than two years at his pleasure. "Le mari restera le maître d'arrêter l'effet de cette condamnation en consentant à reprendre sa femme" (Penal Code, 336, 337; Viollet, p. 505). This is a survival of the law of the Ancien Régime, by which the husband might immure the adulteress in a monastery, or even in a house of correction, by an authority obtained from the king. The imprisonment might be for life.

The German Civil Code breaks wholly with the marital power, by equalizing the crime of husband and wife. Yet it preserves the private character of the offence by making adultery punishable with imprisonment on the application of the injured party.

The Portuguese under the old régime erected a monument more durable than brass to the Catholic interpretation of equal moral responsibility by a law which punishes the adultery of the wife with from two to three years' hard labour, and of the husband, if committed under the conjugal roof, with a fine of not less than £2, nor more than £480.

[1] In this relation, the religious marriage may fittingly be enumerated as a distinct type.

Countries which have maintained the rule of the Roman Church, of course, do not allow divorce under any circumstances whatever. This is the case with Italy, Spain and, till the revolution, Portugal in Europe; and with Mexico, Brazil, Chili, the Argentine Republic, and most of the South American States. In some states of mixed religions the Canon Law is applied to Catholics: thus in Austria there is no divorce even if one party to the marriage should not be a Catholic.[1] The same rule applies in Hungary.

The Greek Church, adhering in the main to the traditions of the Roman Law as re-modelled by Justinian, allows divorce, and it is an interesting point of historical continuity that the law of divorce in Greece at the present day is, with unimportant amendments,[2] that established by Justinian.[3]

In France divorce was unknown until 1792, and a wife could not even obtain a separation from an unfaithful husband. In that year the Convention went to the other extreme, admitting divorce, not only by mutual consent, but even for incompatibility of temper alleged by one party. There was a re-action under the Directory in 1795, and in 1797 the Church re-affirmed the indissolubility of marriage. Napoleon, however, allowed divorce by mutual consent under some restrictions.[1] On the restoration of the Bourbons divorce was entirely suppressed (1816), and though its re-introduction was voted by the Chamber in 1831, it was thrown out by the Peers, and there was no divorce in France until 1884. Under the law of that year and of 1886 the grounds of divorce are equal for either party, and are—

---

[1] In Bavaria and in Wurtemberg, before the consolidation of the German law under the new Imperial code, there was no absolute divorce for Catholics, but the restriction did not apply to mixed marriages (*Parliamentary Papers*, 1894; Miscellaneous, No. 2, p. 24).

[2] *Parliamentary Papers*, 1894; Misc., No. 2, p. 81.

[3] The law of the Greek Church is followed pretty closely in Servia. Divorce cases are tried by the spiritual courts, and the grounds are: Adultery, an attempt on the life of either consort, treason, leaving the Church, "if the wife without the husband visits the baths, beer gardens, or other suspicious places with men, or if the husband brings strange women into his house, or keeps them elsewhere," an accusation of adultery against an innocent wife, or urging her to unchastity, condemnation to seven years' imprisonment, desertion for seven years or for three years, if the husband has left the country and cannot be traced, or for four years if it is proved to be wilful.

In Russia the rules of divorce vary according to the religion of the parties, but it is admitted both for the Russo-Greek and the Lutheran in cases where the fault of one party has violated or practically nullified the marriage contract (*Parly. Papers, ib.*, p. 128).

In the case of members of the Russo-Greek Church, the grounds of divorce are: Adultery (though only when provable by an eye-witness), impotence, a sentence involving a loss of civil rights, five years' desertion. It should be noted that the guilty party may be condemned to celibacy for adultery. Among members of the Lutheran Church the grounds are: Adultery, prenuptial unchastity of the wife, attempt to poison, five years' desertion, repugnance to marital intercourse, refusal to fulfil conjugal duties, incurable infectious disease, madness, depravity of life, cruelty and offensive treatment, attempted dishonour, unnatural propensities, crimes involving capital punishment or penal exile.

In Roumania divorce is allowed by mutual consent of the parties, provided that the court is satisfied that the maintenance of a common life is impossible, that the separation is sanctioned by the parents, and provision is made for the maintenance of the wife and children (*Parly. Papers, ib.*, pp. 126, 127).

(1) Adultery.

$(2)\left\{\begin{array}{l}\text{Excès.}\\ \text{Sévices.}\\ \text{Injures graves.}\end{array}\right.$

(3) Conviction for crimes involving certain aggravated punishments.

"Excès" is interpreted to mean acts of violence endangering life; "sévices," other acts of violence; while as to "injures" involving lesser misconduct, the courts have a wide discretion. They take it generally to cover calumnious imputations, desertion, refusal of cohabitation, and habitual drunkenness.[2]

In Germany the revolutionary epoch left its mark, and by the Prussian Code of 1794 divorce was allowed for any of ten causes, including mutual consent in case of insuperable aversion where the marriage was childless, and even if there were children where the cause was held good by the judge. But under the new civil code, which came into force on January 1, 1900, the conditions are more stringent, the grounds recognized being—

---

[1] The husband had to be over 25, and the wife over 21; they must have been married more than two and less than twenty years. The approval of the parents was required, and a proper agreement had to be made for the maintenance of wife and children. In other respects, however, the law was not equal between husband and wife, as she could not claim divorce for adultery unless with certain aggravations (Jeune, art. "Divorce," in *Ency. Brit.*).

[2] Belgium preserves the Imperial Code of 1803, but Holland, though the law of marriage is, in general, based on that code, restricts the grounds of divorce to adultery, malicious desertion, imprisonment for over four years, and ill-treatment endangering life (*Parly. Papers, ib.*, pp. 33 and 100). The Grand Duchy of Luxemburg, keeping closer to its original, "allows the mutual and continued consent of both parties" under legal conditions and tests to be "a sufficient proof that life in common is insupportable to them" (*Parly. Papers, ib.*, p. 90).

In Switzerland, the recognized causes are adultery, an attempt on the life of either party, cruelty, grave indignities, infamous crime or base conduct rendering married life intolerable, malicious desertion for two years, insanity (under certain conditions), and, finally, conduct rendering married life unbearable. This represents a slight modification, carried in 1907, of the older law, which was criticized as facilitating dissolution for trivial causes (*Report of Divorce Commission*, p. 24; cf. *Parly. Papers*, Misc., No. 2 of 1894, p. 150).

(1) Adultery; which, it is to be observed, is further punishable by imprisonment on the application of the innocent party.

(2) Endangering of life.

(3) Desertion.[1]

(4) Insanity.

(5) Gross neglect of duties by one of the parties or the leading of such an immoral or dishonourable life as entirely destroys the conjugal relations.

Denmark[2] and Sweden[3] recognize adultery, desertion, and conviction of serious crime, as causes of divorce. Norway, by the Act of 1909, has gone much further and admitted divorce after a separation of three years, or a shorter time if there has been a formal decree.[4] Portugal, by the Act of 1910, also allows divorce by mutual consent under certain conditions.[5]

Thus the divorce laws of Europe present an almost bewildering variety. To find some order and method in them we may group them under four heads.

There are (1) the countries which remain under the Canon Law and admit no divorce.

There are (2) countries or populations governed or influenced by the law of the Greek Church, running back to Justinian.

There are (3) the countries governed or influenced by the Code Napoléon.

And (4) there is the group of Protestant countries.

The common tendency in the last three cases is to place divorce upon an equal footing for both parties, and to permit it in all cases where the act of one party without the collusion of the other has practically nullified the marriage contract. Thus, desertion and conviction of serious crimes are generally recognized causes; but in countries influenced by the Code Civile the element of personal injury is especially pressed, and where this is loosely interpreted divorce becomes easy. In the

---

[1] Provided that the guilty party has for one year refused to obey an order for restitution of the conjugal life, or has refused to cohabit for one year, having gone abroad or to such place as makes communication difficult (*Parly. Papers*, Misc., No. 2, 1903).

[2] *Parly. Papers*, No. 2, 1894, p. 53.

[3] *ib.*, p. 146. By appeal to the king's prerogative divorce may be obtained for irreconcilable aversion as well as for other causes (*Divorce Commission Rept.*, p. 24).

[4] *Report of Commission on Divorce*, col. 6478, p. 23.

[5] *ib.* The main grounds of unilateral action are adultery, conviction of certain crimes, ill-treatment, desertion, incurable lunacy, inveterate gambling habits and incurable contagious disease.

Protestant countries conviction of crime and the distinct refusal of one party to perform his or her duty is more prominent. There is, moreover, a partial tendency to divorce by mutual consent which appears most noticeably in the most recent laws.

14. In the United Kingdom the history of the Divorce Law is altogether peculiar. The Scottish courts began to grant divorces soon after the Reformation, and in 1573 recognized desertion, as well as adultery, as a cause; this remains the Scottish law to the present day. But in England the course of events was different. The Commission appointed by Henry VIII. and Edward VI. recommended divorce for adultery, desertion and cruelty, and Lord Northampton (*temp.* Edward VI.), who married again after a separation *a mensa et thoro*, was held justified, but the recommendations of the Commission never became law, and in Foljambe's case at the end of Elizabeth's reign marriage was held indissoluble. In 1669 the first divorce was granted by private Act of Parliament, but there were only five such Acts before George I.'s time, and it was not till 1857 that divorce was allowed by English law, and this law differs from that of the majority of continental countries in not recognizing the practical destruction of the marriage life through desertion, crime or drunkenness as a ground for anything more than separation. Neither does it place husband and wife on an equal footing. Down to 1884 the courts could enforce an order for the restitution of conjugal rights by imprisonment, but in 1884 this power was withdrawn, and in the Jackson case, a few years later, it was apparently held that though such an order could be obtained by a husband or wife, it could neither be enforced by the courts nor could the injured party be allowed to enforce it for himself. Thus the tendency of recent English legislation has been to facilitate separation, but not to enable him or her who has made the mistake of marrying a confirmed criminal, a lunatic or an habitual drunkard to marry again.

The British Colonies, and with them, of course, the United States, started with the English law, but have for the most part modified it in the direction of greater liberty. Canada forms the exception. In the Dominion, under the influence of the Roman religion, no divorce courts have been instituted, and none exist except in Nova Scotia, New Brunswick, Prince Edward's Island and British Columbia, where they had been instituted before the Union, and where the conditions of divorce are the same, or nearly the same, as under English law.[1]

---

[1] *Parly. Papers*, 1894, vol. lxx. part iii. p. 54 ff.

In South Africa the Roman Dutch law in Cape Colony recognizes adultery and graver sexual offences, malicious desertion, perpetual imprisonment, long absences and refusal of marital privileges as grounds of divorce, but in practice it appears that only the first two causes are brought forward. Natal also recognizes desertion in addition to adultery.[1] In the Australasian group divorce is either on the English lines or modified so as to admit desertion, drunkenness and crime as grounds.[2]

15. The divorce laws of the United States form a study by themselves, and the utmost that I can attempt is a summary of the principal features. In one state or another twelve different causes of divorce are recognized; they are—

(1) Adultery. This is recognized generally as a ground of divorce.

(2) Bigamy. General.

(3) Impotence. General, but as a rule with the requirement that the plaintiff must be ignorant of the fact at the time of marriage.

(4) Idiocy. Most states.

(5) Wilful desertion. The term varying from six months to five years. This is usually a ground of absolute divorce, but sometimes of separation only, and as a rule the deserted party must not have consented to it or have rejected reconciliation.

---

[1] *Parly. Papers*, cd. 1785 (1903), p. 21.

[2] South Australia, Queensland and Tasmania adhere to English law (*Parly. Papers*, 1894, vol. lxx. pp. 15, 16, 33, 95). New South Wales places husband and wife on an equal footing in the matter of adultery provided the husband is domiciled in the colony (*Parly. Papers*, 1903, cd. 1785, p. 13). It also recognizes desertion, cruelty, conviction for crime, and habitual drunkenness; while, further, it is a ground of divorce if the wife has "habitually neglected or rendered herself unfit to discharge her domestic duties; or if the husband has habitually left the wife without the means of support" (*ib.*, p. 14). Victoria recognizes desertion, imprisonment and habitual drunkenness. This must be coupled, in the case of the husband, either with cruelty or with the charge that he has "habitually left his wife without means of support"; on the part of the wife, "with neglect of her domestic duties." Adultery by the husband in the law of this colony is only a sufficient ground of divorce if committed in the conjugal residence, or coupled with circumstances or conduct of aggravation (*Parly. Papers*, 1894, vol. lxx. part i. p. 19). New Zealand, which, till 1898, adhered closely to the English law, now recognizes imprisonment for serious crime, desertion and habitual drunkenness, coupled with cruelty on the part of the husband, or habitual neglect of domestic duties on the part of the wife (*Parly. Papers*, 1903, cd. 1785, p. 16). Since 1908 lunacy under certain conditions is also a clause (*Div. Rept.*, p. 20). West Australia since 1912 recognizes very similar conditions (*ib.*, p. 21).

(6) Absence. New Hampshire and Connecticut.

(7) Neglect of husband to support wife. Twenty states, but in some of these it is a ground of separation only.

(8) Habitual drunkenness for a term of years. Almost all states.

(9) Use of opium. Two states.

(10) Conviction of felony. The greater part of the country.

(11) Extreme cruelty. Almost all states, but in some only as a ground of separation.

(12) Indignities to the person. Eight states.

To these may be added a variety of causes, recognized in one state or more. In Illinois divorce may be given at the general discretion of the court.[1] In Washington[2] divorce may be given for any cause deemed by the court sufficient, and when it shall be satisfied that the parties can no longer live together. In South Carolina there is no divorce at all.[3]

---

[1] The summary given in the text is derived from *Parly. Papers*, 1894, Misc., No. 2. The statements given by W. F. Wilcox (*Ency. Brit.*, ed. 10, article "Divorce") may be summarized as follows: In six out of seven states divorce is allowed for adultery, desertion, and cruelty; in thirty-nine states for imprisonment, in thirty-eight for habitual drunkenness, in twenty-two for neglect to provide. In all states but two, complete separation lasting from one to five years is a ground of divorce (*ib.*, art. "Marriage," p. 549). From the summary statement in the *Report of the Divorce Commission* (p. 27) there appears to have been no essential change.

[2] Bryce, *Studies in Jurisprudence*, ii. 440.

[3] The charge brought by critics of the United States marriage laws, however, is not so much directed against loose rules of law, as against lax interpretation by courts. This is carried so far in some states, that it would seem as though divorce were placed at the free disposal of either party. One wife alleges that her husband "has never offered to take her out riding"; another, that he quoted verses from the New Testament about wives obeying their husbands; a third, "that he does not come home till ten o'clock at night, and when he does come home he keeps plaintiff awake talking." These cases, with further details which have their ludicrous side, are quoted by Lord Bryce (*op. cit.*, vol. ii. p. 445) from a report of the United States Labour Bureau of 1880. The number of divorces granted in the Union increased from 9,937 in 1867, to 25,535 in 1886, a proportion of 250 to 100,000 married couples. In some of the laxer states, however, the proportion is much higher, there being in Ohio, for instance, some 3,000 divorces annually to from 33,000 to 44,000 marriages. In two-thirds of the suits the wife is the plaintiff, but statistics combat the suggestion that desire for another marriage is the common cause of divorce. Thus, in Connecticut, where the figures are best available, only one-third of those divorced re-marry in each year. A further point of high importance is that the number of divorces in proportion to the population does not vary with the number of causes for which divorce can be obtained—*e. g.* in 1880, New York admitted adultery only as a cause; New Jersey added desertion, and Pennsylvania further added cruelty and imprisonment. Yet New York had 78 divorces per 100,000 couples; New Jersey 26, and Pennsylvania 16 (Howard, iii. 217).

16. Comparing the divorce laws of modern states as a whole, the general tendency, notwithstanding the bewildering differences in detail, is tolerably clear. Legislation moves in the direction of allowing divorce for adultery, cruelty, persistent desertion, habitual drunkenness, serious crime—in short, for such behaviour of one party as makes the married life impossible or unbearable to the other. So far the dissolution of marriage is regarded as a relief which one party may claim on the ground of the other party's delinquency, and in a measure as the punishment of that delinquency. But there is also a more radical movement, not so marked but apparently growing, to regard marriage consistently as a contract voidable, like other contracts, by the agreement of the parties to it, and to restrict the function of the state to the duty of seeing that no fraud is committed, and that the involuntary parties to the original contract, the children, do not suffer.

In any case, marriage, in modern legislation, is more a contract than a sacrament. It is a relation which binds two parties together without annulling the legal personality of either, and is terminable by the fault of either. In ethics, the change that it has undergone may be expressed by saying that from being a sacrament in the magical, it has become one in the ethical, sense. Regarded as a magical sacrament, marriage is a rite which removes the taboo on sexual intercourse between a man and a woman, while at the same time imposing a lifelong taboo on the intercourse of either of them with a third person. As an ethical sacrament, marriage is the fruition of perfect love, in which, at its best, men and women pass beyond themselves and become aware through feeling and direct intuition of a higher order of reality in which self and sense disappear. If it is not given to all to obtain this best, yet the humbler lessons of unselfishness and mutual aid are learnt by ordinary men and women in greater or less degree from marriage, and seldom effectually learnt from other sources. But this ethical conception implies the retention of full personal rights by the wife, and though doubtless realized often enough under the older quasi-servile marriage, that was because the facts of human nature and the relations based upon them cut deeper than all law, and wives have been men's helpmates and sometimes their tyrants even when law made them most abjectly their slaves. The modern view of marriage recognizes a relation that love has known from the outset. But this is a relation only possible between free self-governing persons. If it be true that "woman is not undeveloped man, but diverse," that diversity will bets express itself through her freedom to act as a responsible agent, and only when so expressed can we justly measure its character and amount. Such freedom is the basis of marriage as an ethical sacrament, and that conception of marriage is accordingly bound up with the general liberation of women.

In the lowest stages of society the life of women is less differentiated from that of men than it afterwards becomes, but there is a tendency for the heavier drudgery to fall on them, while the men do the hunting or fighting. At a higher stage the sphere of woman becomes more clearly restricted to the house. She does hard outside work only when compelled thereto by poverty, and the idea grows that she should be protected by her men-folk and as far as possible sheltered from the world. She becomes a different being, romantically conceived as of finer, more ethereal, texture than the male, but is practically allowed no will or character of her own. At a still further stage the ethical conception of personality comes into play. To be the ideal being that man would have her it is recognized that woman must be a responsible agent, and it is seen that her special talents and qualities must have all the scope which freedom gives to come to the fulness of their development, while it is only through free development that the extent of her differentiation can be determined. Roughly parallel to this movement of thought is the evolution of the marriage tie as we have traced it—the natural family at first incomplete and the marital relation loose and uncertain; next, a close union under the lordship of the husband, based in its lower forms on proprietary right, and at a higher stage on religious sanctions; and, finally, a union, not less intimate because less mechanical, between two free and responsible persons, in which the equal rights of both are maintained, based not on a magical sacrament, but on the most sacred human relation.

CHAPTER VI

RELATIONS BETWEEN COMMUNITIES

1. In the early stages of ethics, rights and duties do not attach to a human being as such. They attach to him as a member of a group. A stranger may enter a community with a safe conduct, or under the protection of some god or some taboo. He may come as a guest under the ægis of his host. But except under such special conditions he is destitute of rights. The members of the community will give him no protection because he is not one of themselves. They stand by one another, but, except for such special reasons as have been mentioned have no concern with outsiders. Morality is in its origin group-morality. This division between the community and the stranger cuts deep into the ethical consciousness. In primitive society it implies a very narrow circumscription of the ethical area, since primitive societies, besides being exclusive, are generally small. But, far from being confined to primitive society, the essential features of group-morality are maintained with great persistence, though in very varying shapes, into the higher civilizations. Civilized humanity is still organized in groups, and there is still a deep distinction between the obligations binding members of the same group to one another and those which are recognized as holding as between members of different groups. Every independent nation is such a group. In greater or less degree every distinct class within a nation is such a group. Religious bodies, political parties, all sorts of voluntary associations and, finally, the family itself, are other instances.

But here one distinction is to be noted. All these groupings may be the basis of special obligations, but it does not follow that they all alike maintain group-morality in its distinctive features. For these distinctive features consist not so much in the recognition of special obligations as in the denial of more general rights and duties arising out of more general relations. The special and the general need not necessarily conflict. The one may supplement the other. It is where a wider obligation is ignored or overridden in favour of the narrower that we speak of group-morality.[1] A great part of the comparative study of ethics consists in tracing the forms assumed by group-morality and its modification by wider ideas of obligation, and much of ethical evolution is constituted by the interaction of the two principles. In the present chapter and the next we shall consider the two departments in which this evolution appears to be of the greatest importance. We shall begin with the mutual relations of independently governed communities and their respective members.

2. Early society is, as has been said, organized generally in small groups, and between these groups and their respective members there is not, except under special conditions, any bond of mutual regard. Hence, man being a pugnacious creature, it is natural that disputes should arise and that they should be settled by recourse to arms. To represent primitive man as in a state of perpetual warfare with his fellows is, indeed, a gross exaggeration. Normally border relations are friendly, and there are some peoples, particularly in the lowest economic grades, who seem naturally mild, unaggressive and peaceable, and to whom war is unknown. Such were some of the Eskimo.[2] Such are one or two small, favoured and isolated South Sea Island peoples.[3] Such are some of the Asiatic jungle peoples.[4] But these, after all, are rare exceptions,[5] and among the great majority of peoples disputes arise which from time to time give occasion for the resort to arms.

The actual frequency and seriousness of warfare, of course, vary very greatly, according to the more or less martial character of the people, their geographical conditions and economic circumstances. Regular organized war implies a certain social development, and is hardly to be found at the lowest grades, but we find "a sort of" warfare in the form, perhaps, of perpetual predatory raids, as where an outcast tribe like the Bushmen live largely by pillaging its more settled neighbours, who reply whenever they can with pitiless massacres.[1] We find fighting arising from disputes about the infringement of the tribal border—the "frontier incidents" of savagery—as often among the Australian clans.[2] It may arise out of personal injuries, the capture of a woman or the slaying of a man, which the injured tribe is determined to resent. In this latter case there is no very deep distinction between a war of distinct tribes and the blood feud of two clans within a tribe.[3] In both cases the fighting may be of the nature of a trial by combat, and so it is, perhaps, that we find here and there a regular arrangement of the campaign in which time, place, and even the number of the combatants and their weapons are predetermined. Thus, in the Malay region, clan disputes are sometimes settled by duels, or by battles arranged at fixed times and places. Among the Battas of Sumatra the relatives of the combatants mingle freely while the war is in progress. Yet the actual fighting is waged to the extermination of the beaten party, saving always its chief.[4] The tale of the Horatii and Curiatii preserves the memory of a custom of "representative fighting" among the early Latin tribes, and instances occur in Greek history down to the sixth century.[5] We may, perhaps, connect with this range of ideas certain indications of what we might call a sportsmanlike view of war. Instances might be found among the North American Indians—for example, in the story of the Arkansas giving a share of their powder to the Chickasaw to fight with them, or of the Algonquin refraining from pressing an attack on the Iroquois on its being pointed out that night had fallen.[1]

---

[1] The term is, of course, one of disparagement, so far as we assume the correctness of the modern point of view. It may, however, be, and at times has been, that the more humanitarian view is too crudely expressed, and the group-morality which protests against it may then prove to be relatively right.

[2] For example, the people of Baffin's Land had no warfare, and Ross could not make them understand the meaning of battles (Reclus, 108).

[3] The Lower Carolinas are said by Waitz to live at peace, while furnishing the upper islands with arms. In the small islands of the Tokilan and Ellice group no weapons are known except those washed ashore, which are stored in the temples (Waitz, v. ii. 190).

[4] The little Kubu family groups do not fight among themselves and never come into contact with others. If menaced, they run away (Hagen, p. 70). The Punans rarely have fights either within or between groups, the only exceptions known to our authorities being cases where they have been egged on by other tribes (Hose and McDougall, ii. 183).

[5] Among tribes of whose "foreign" relations we obtained information we found twelve which could be said to have "no war," ten in the hunting or lowest agricultural stage, one in the higher pastoral where war was said to be rare, and one in the highest agricultural, where it was mild (*Simpler Peoples*, p. 232).

---

[1] Letourneau, *La Guerre*, pp. 56, 57, quoting Moffat, *Twenty-three Years in Central Africa.*

[2] Letourneau, *ib.*, p. 29. Border relations, however, according to Messrs. Spencer and Gillen (*Native Tribes of Central Australia*, p. 32), are generally amicable, and there is no such thing as a constant state of enmity.

[3] Technically, the term feud should be used of a fight within what is, for many purposes if not for all, one community, or of a fight waged by a part of a community—*e. g.* a kindred avenging a murder. War should be used of a fight organized by a community as a whole. But the distinction is difficult to carry through, as the normal organization of a fight with a hostile tribe may be by a volunteer party under a chief chosen *ad hoc.* This is common, *e. g.* among the North American Indians.

[4] Waitz, v. i. 161, 162. In some peoples, though there may be no precise arrangements as for a judicial combat, a very little bloodshed seems to appease the martial ardour of the combatants. Thus, among the Micronesians, it is said, wars break out on small pretexts, but on the death of two or three warriors the rest run away, and offer gifts which terminate the war. Yet prisoners are often tortured and the land laid waste (Waitz, v. ii. 132).

[5] Herodotus, Book I. chap. lxxxii.

Apart from this half-judicial, half-chivalrous view, the warfare of savage and primitive societies is not always without its rules and limitations. Often an open and honourable declaration of war is insisted on, as among the Kaffirs,[2] and in early Rome.[3] The persons of envoys are, as a rule, respected, and often women are employed for this purpose. Agreements are understood and bad faith is condemned.[4] We even hear of instances in which the use of poisoned weapons is avoided,[5] and in which permanent injury to property is forbidden.[6]

---

[1] Waitz, iii. 154. For a similar case among the Australians, see Letourneau, *op. cit.*, p. 33.

[2] Waitz, ii. 398.

[3] Cicero, *De Republica*, ii. 17, quoted in Bruns, p. 11.

[4] *e.g.* the N. A. Indians had their regular flags of truce, peace councils, and pipes of peace (Catlin, *N. A. Indians*, ii. 242). In early Rome those who offended against a foreign nation by an attack on envoys, were made over to them (*deditio*) to deal with as they pleased. By an intricate perversion of moral sentiment, the people might refuse to ratify a truce made by a general in the field on its behalf, but in that case surrendered the general, as though it were he who had broken his word to the injured enemy. By this vicarious sacrifice the commonwealth was to be relieved from all guilt (ut populus religione solvatur), the injury being put on to the head of the general who had done his best for it (quandoque noxam nocuerunt . . . ob eam rem hosce homines vobis dedo, Livy, ix. 10; Ihering, *Geist des Romischen Rechts*, i. 131). In all this, however distorted, a feeling of the obligation of good faith between nations is indubitably present.

[5] *e.g.* among the Kaffirs (Waitz, ii. 398, 399). According to this authority, the Kaffirs also avoided the starving out of an enemy, and, generally speaking, showed a certain chivalry in war which they have unlearnt in contact with the whites.

[6] Among the Eastern Carolinas, the victor carries off the movables, but does not take the land of the vanquished, and avoids cutting down their fruit-trees (Waitz, v. ii. 118, 119). Even the Book of Deuteronomy, which lays down a kind of ideal code of extermination, based on religious principles, deprecates the cutting down of fruit-trees, but rather for the advantage of the invader than for any more magnanimous motive: "For thou mayest eat of them, and thou shalt not cut them down: for is the tree of the field man, that it should be besieged of thee?" (Deut. xx. 19). Quaint illustrations of savage chivalry occur where some primitive conception, colliding with the ordinary instincts of warfare, places enemies under a sacred obligation to each other. Instances may be found among some of the Indian hill tribes, for whom hospitality is so sacred a duty that a defeated enemy can avail himself of it against his conqueror. M. Reclus (p. 261) mentions the case of a Bengalese clan being driven out of their homes by an enemy, and coming to claim asylum as guests with their conquerors, to whom they proved so expensive as lodgers, that it became

3. But while war, like other departments of savage life, has its customs and obligations, and while in some of them we can trace germs of moral feeling, of honour and fair play, we must not blind ourselves to the broad fact that this same rule of custom generally lends to savage warfare something of the character of a personal feud. We shall not be far wrong in saying of uncivilized warfare in general terms that it is in its essence as much a struggle between individuals as between communities, that the conquered enemy has no recognized rights of immunity to protect him, but that his person and property, his wives and children, stand at the mercy of the conqueror. As in other departments of ethics, so here, we find that this principle is not always pushed to an extreme. There are all manner of variations in the rigour with which it is applied, and still more in the practical consequences drawn from it. Here and there we find touches of humaner feeling investing themselves with a religious sanction. In other cases social circumstances mitigate the lot of captives. But in the main the defeated enemy is rightless, and is treated as best suits the victor's convenience.

This will readily appear from a brief survey of the possible alternatives in the treatment of prisoners. Quarter may be refused altogether, or if the prisoner is taken he may be enslaved, tortured, eaten, adopted, ransomed, exchanged, or liberated. Further, a distinction may be, and in practice often is, drawn between the adult males among the enemy on the one hand, and the women and children on the other, *e. g.* the males may be put to the sword, while the women and children are enslaved or, perhaps, adopted. Coming now to the actual practice of savage and barbarous races, we find that, at least so far as regards males, the milder alternatives are by far the rarer. Of exchange there are several instances among the North American Indians—for example, in the tribes of New California, where, though enemies are killed in battle, they are not scalped, and prisoners are not enslaved, but exchanged.[1] Ransom is also very seldom

---

more profitable to restore the lands and goods taken from them. The same author mentions the case of a murderer playing the same trick upon the father of the murdered man, who not only could not touch him as long as he was his guest, but was compelled to support him—a situation which could only be paralleled by that of the N. A. Indian widow, who might be appeased for the murder of her husband by the adoption of the murderer in his place.

[1] Waitz, iv. 241. But they would seem to take women captives, as one of their war-songs begins: "Let us go, leader, to the war, let us go and make booty of a fine maiden." Catlin (ii. 71) relates that the Comanches kept a little white boy as a prisoner, and finally exchanged him for three members of their own tribe bought by the whites from the Osages.

understood by savages, but the Creek Indians were said to adopt boy and girl prisoners and to hold grown men and women for ransom, though apparently they were also subject to an ordeal, as it is stated by the same authority (an eighteenth-century writer who lived among them) that the women of the tribe were wont to make payment in tobacco for the privilege of whipping prisoners as they passed.[1] The third alternative was that of adoption, which, especially among the North American Indians, forms the main exception to the rule that the prisoner is only saved in order to become a slave. For several tribes saw another use, based upon another phase of savage ideas, to which he could be put. He might impersonate a deceased warrior of the tribe. It is a part of savage make-believe that one man can stand for another, that a man's personality can be transferred, possibly by the supposed transfusion of the soul, possibly by a ceremonial investiture with the names, rights and possessions of the deceased. It was a fairly common practice among the Red Indians to spare prisoners for this purpose. They had, in the first instance, to undergo an ordeal, a severe whipping or other torture, and then, if a widowed woman of the tribe chose to adopt one as her husband, he might live and become a member of the tribe, replacing the dead man in every respect, as husband to his widow, as father to his children, as bearer of his totem, as successor to all his rights and duties—in short, as perpetuating his personality.[2]

Among two hundred and fourteen peoples we find evidence of the indiscriminate killing of the conquered in one hundred and five cases, and of the killing of men only in forty-one more. It is fair, however, to say that in the first number we include cases of head-hunting, which do not necessarily imply that the injured are slain in any large numbers, or even that quarter would be normally refused. We find sixty cases in which both sexes may be enslaved, thirty-two in which women and children are enslaved, thirty-nine cases of adoption, and eighteen in which prisoners are exchanged or set free. In many cases, of course, more than one practice is followed by the same tribe (*Simpler Peoples*, p. 232).

[1] Caleb Swan, in Schoolcraft, v. 280.

[2] Catlin gives it as the general practice of the Indians known to him that they inflict appalling tortures on their prisoners, in sufficient numbers to atone for those similarly dealt with by their enemies, while the remainder were adopted as husbands by widows in the tribe (*op. cit.*, ii. 240). The element of fiction comes out strongly when we learn that a boy may be adopted in place of a deceased husband, and is then called father by the children of the deceased (Schoolcraft-Drake, i. 218–220). Among the Dakotas male prisoners were seldom taken, except by previous arrangement, which would be made when the warriors of the tribe wished to take one or more for adoption to recruit their number. The fate of the warrior would in this case depend upon the decision of the war-chief (Schoolcraft-Drake, i. 188). Among the Iroquois, prisoners had to run the gauntlet all through the villages lying near the line of march. At the

To pass to the more severe alternatives, the refusal of quarter in battle is widespread. In North America we find it in place of either torture or adoption among the Apaches,[1] the Chepewyans,[2] and generally among the Californian tribes.[3] In negro warfare the defeated are often annihilated. The men are killed sometimes for eating, sometimes merely for the killing; the women and children are sometimes killed, sometimes enslaved. The Waganda and the Masai killed all the adult males, the Bechuana took no prisoners. The Fans took them, but ate them. The Gallas first massacred indiscriminately in Abyssinia; they now castrate their male prisoners.[4] But mere killing did not always suffice; an easy death might be too good a fate for an execrated foe. Torture, which, as is well known, reaches its most extreme development among the North American Indians, seems to be due to no more recondite motive than that of revenge. Thus, according to Catlin,[5] prisoners are tortured in sufficient numbers to atone for those similarly dealt with by their enemies; and it is stated that children are encouraged to take part in the process in order to instil hardness and vindictive feelings into their minds. The rude Takhali, according to Waitz,[6] give their children a regular training in cruelty, especially to animals—as though this were necessary. Torture is com-

---

journey's end they might be adopted by those who had lost relations, and when bereaved families were satisfied, if the remaining prisoners seemed desirable acquisitions to any family the gauntlet test would be applied to them. They would be lashed by the women and children, and those who fell from exhaustion under the ordeal would be dispatched, the survivors being adopted. It should be added that when adopted captives became discontented with their new life, they were in some cases set at liberty. Adoption, as already mentioned, was in this tribe the rule for the treatment of women and children captives (Schoolcraft-Drake, i. 218, 247; Morgan, *League of the Iroquois*, 341–344). Morgan adds that a distinguished chief was sometimes restored to his own people as a mark of admiration. He was then bound in honour not to fight against his conquerors in future.

Outside the North American Indians we do not hear so much of adoption, but according to De Rochas (quoted by Letourneau, *op. cit.*, p. 49) it occurs in New Caledonia, presumably when the victors' larder does not need replenishing, or when the need of making good the losses of the village is more pressing. Similarly among the Andamanese, Man (*J. A. I.*, xii. 356) states that though women and children may be killed in a night attack on a village, the child, if taken alive, would be treated kindly, in the hope of inducing it to join the captor's tribe.

[1] Reclus, p. 128, but Waitz (iii. 157) says that the Apaches sometimes tormented their prisoners, sometimes sold them.

[2] Waitz, *loc. cit.*

[3] Powers, *Tribes of California*, 405.

[4] Post, *Afrik. Jurisprudenz*, i. 84, 85.

[5] Catlin, ii. 240.

[6] Waitz, iii. 117.

monest among the eastern and southern tribes of North America, and did not occur among *all* the tribes of the West.[1] The horrible history is only lightened by the extraordinary stories of fortitude with which it was borne and by occasional instances of self-sacrifice, such as that of a certain Chippewa chief, Bi-ans-wah, who, having been taken captive, was saved by his father, a noted warrior, who voluntarily surrendered himself to the conquering tribe and offered himself for torture in his son's place. It is one of the few gleams of light which break the darkness of savage history to read that later in life the rescued Bi-ans-wah made an agreement with the Sioux by which the burning of prisoners was stopped on both sides.

The next alternative to torture is that of cannibalism. Cannibalism may have either a magical, a religious, or a purely materialistic value; and, as warfare develops and becomes systematic, and especially as some barbarous tribe consolidates itself and grows stronger than its neighbours, the practice assumes gigantic proportions. Prisoners are not merely killed and eaten on the spot,[2] but are taken home, well treated and fattened for the slaughter, possibly provided with a wife and encouraged to breed a family for the same purpose. There comes, indeed, a stage, perhaps the most revolting in the history of human development, at which the weaker tribes are made almost to perform the functions of cattle in the economy of life for the stronger. This tendency has its parallel—to some extent its alternative—in the development of human sacrifice, whether for religious or magical reasons. In the higher grade of agriculture we find a drop in the proportion of cases of cannibalism reported, but a marked rise in human sacrifice (*Simpler Peoples*, pp. 241–242). The human victim may be a feast for the gods. Or it may be that by eating the dead man, and particularly by eating certain parts of him, such as his heart,[3] the conqueror is held to acquire his virtues, or some occult influence is supposed to be exercised upon the crops, the weather, the stability of a bridge, or the fortunes of war.

---

[1] Waitz, iii. 157. Except among the North American Indians, I find the torture of prisoners but rarely referred to by ethnologists, unless as an incident of cannibalism, human sacrifice, or the slave trade. But Waitz (v. ii. 134) attributes the practice to some Micronesians. It was not uncommon in mediæval Europe.

[2] The suggestively named "Niam-niam" are said to advance to battle with the cry, "Meat, meat! To the oven, to the oven!" (Letourneau, p. 86).

[3] For example, among the Yoruba, hearts are regularly sold to give courage (Ellis, *Yoruba-speaking Peoples*, p. 69).

Cannibalism is, or has been, widely spread[1] throughout Africa, Oceania, South America and Australia (though it would be too much to say that it was general anywhere),[2] and often where it is not now a flourishing institution there are distinct traces of it in legend[3] or, as among the Micronesians and the Andamanese, in the belief that strangers or neighbouring tribes[4] are cannibalistic or, again, in certain magical rights and customs having a cannibalistic significance. The Melanesians are not cannibals, yet they will eat a piece of a dead man's flesh to establish communion with his ghost.[5] Among the North American Indians, where it is rare within the times of which we have a record, we have phrases like "eating the heart of an enemy and drinking his blood," which probably are not mere metaphors. The Sioux, who in later times abhorred cannibalism, used at one time to eat the heart of an enemy. The Chippewas are said to have practised cannibalism. The name "mohawk" means "man-eater," and in certain tribes there were special societies of cannibals who were deemed to possess magical powers.[6] Passing to tropical America, the Caribs, who lived a blameless and well-ordered life among themselves, made such frequent cannibal raids that the very name of "cannibal" is supposed to be a corruption of their tribal name. In Guatemala and Nicaragua, prisoners were generally[7] sacrificed and eaten, while it was in ancient Mexico that cannibalism and human sacrifice reached probably their greatest development in history. The Mexicans maintained an eternal warfare with the Tlaxcala in order that the supply of captives for sacrifice might be kept up. The victim was identified with the god, and his killing and eating meant a resurrection of the god and a renewal of his strength.[1] According to the Mexican legend the gods themselves sacrificed themselves to the sun to endue him with strength to do his work, and they handed on the duty to their human representatives, directing men to fight and kill each other to provide the sun with food.[2] Among the Guaranis of South America a sixteenth-century account describes the cannibal sacrifice of prisoners, who, with an exaggeration of cruelty, were given a wife previously, and if there was a child it was fattened and eaten.[3]

---

[1] It is not, of course, confined to captives, though they are the handiest material if available. Sometimes the aged are eaten, as among the Battas of Sumatra (Waitz, v. i. 189). Sometimes the young. For example, among the Central Australians, a younger child is eaten in order to give strength to an elder (Spencer and Gillen, i. 475). Sometimes a slave. Sometimes it is a gruesome punishment, *e.g.* for adultery, treason, espionage, and robbery by night among the Battas, who also eat their prisoners (Waitz, *loc. cit.*, 188).

[2] It is very rare in Asia and North America. We have found only one case of cannibalism and none of human sacrifice among Pastoral peoples (*op. cit.*, pp. 240, 242).

[3] Enemies are still eaten in the Luritcha tribe of the Central Australians. Among the Arunta, cannibalism, if not wholly discarded, is very slightly practised, but its memory lives in many traditions of the "Alcheringa"—the Australians' "great long ago"—and some of the Engwura ceremonies are thought to represent its suppression (Spencer and Gillen, i. 324, 473–475).

[4] The Ainus of the Tokapchi district are particularly addicted to night attacks, and are alleged to have been cannibals, and are even now abhorred by their neighbours (Batchelor, *Ainu of Japan*, 288).

[5] Codrington, *J. A. I.*, x. 285.

[6] Waitz, iii. 159.

[7] According to Torquemada. According to some other authorities, the practice was confined to certain tribes (Waitz, iv. 264).

Finally, with the category of ideas to which cannibalism and human sacrifice belong we should connect the head-hunting raids especially common in the Malayo-Polynesian region. The carefully-preserved skull is at once a trophy and proof of valour, a memorial of vengeance, and a property of magic powers. Different aspects are specially prominent among different peoples. The Nagas of the Indian Hills, all of whom are head-hunters, are said to keep the skull to glut their vengeance.[4] In Melanesia the idea of human sacrifice is prominent and we are closer to cannibalism. For at the funeral of a chief an expedition starts off to take heads in his honour, and any one with whom it falls in, not being of the chief's own people, serves the purpose. The object alleged, in one of the islands—Florida—for human sacrifice to the dead, is that "mana" is obtained—the mysterious power with which chiefs are endowed in life as well as after death, which they can transmit from the grave to those who then put themselves into communion with them. Further, in another Melanesian island — Ysabel — the human victim is eaten, and we have full-blown magical cannibalism; and, to illustrate the affinity of ideas, we find that in Florida, where the victim is supposed only to be sacrificed, it is admitted that a little flesh is eaten.[5] But with these customs we are passing away from the special ethics of war into those of primitive religion generally. Head-hunting may be a purely private matter. It may be an incident in the making up of a blood feud, as among the Lampongs of Sumatra, where the murderer must appease his victim's family with two skulls and a victim to be buried at the grave.[6] It may be a matter of private vengeance or gain or glory, as among the Nagas, where men lurk about the water-ghat of a hostile village for the first woman or child that comes to draw water. Or it may be, as sometimes among the same people, the express object of an organized expedition.[1] In the former case it is at most an incident in the life of neighbouring hostile villages. Only in the latter is it the object of regular warfare.

---

[1] Payne, *History of the New World called America*, i. 470. Frazer, iii. 134 ff.

[2] Payne, i. 504.

[3] Letourneau, *La Femme*, 160, 161, 163.

[4] Godden, *J. A. I.*, xxvii. 15.

[5] Codrington, *J. A. I.*, x. 308, 309.

[6] Waitz, v. 149.

A horrible feature of Naga head-hunting is that the skull of a woman or child, even a baby in arms, in prized as much as a man's. It is even thought a greater feat to obtain one, since it implies the boldness of penetrating into the heart of the enemy's country. This indiscriminate slaughter of women and children is frequent, but not universal, in savage and barbaric warfare.[2] Among these same Nagas, in the feuds of clans as distinguished from the wars between tribes, the women are sometimes spared. In the quarrels of the Luhuga killing is limited by agreement, and the women are not injured. It is a bright spot in the sombre picture of the North American Indian warfare that women were respected. The reason was a magico-religious belief, in which it is open to us to find an ethical element, that unchastity would bring misfortune. The Dakotas, we are told, "generally treat female captives with respect. We hear of no violation of chastity on their war parties. During their absence the cause of their being chaste on their excursions, they say, is that they may not bring vengeance down upon their own heads—that is, displease the spirits of the deceased and the war medicine, as they would be made to suffer for their incontinency. They must keep themselves from women all the time they are out at war. Superstition has a controlling influence over them in this as in other respects."[3] Among the Hurons and in Virginia, though no quarter was given, as a rule, in the fight, women and children were generally made prisoners. The Winnebagos[4] say that they respect chastity in war at the bidding of the Great Spirit. The Iroquois did no violence to women captives, and Catlin states this as the general rule of the Indians that he knew. An exception are the Indians of Texas, who treated female captives with cruelty. But the general rule for women captives was adoption in a servile condition. Similarly in Oceania, it is stated that in the feuds of the little island of Rotuma women are respected, and that in the Carolinas and the Marshall and Gilbert Islands women prisoners are generally spared. At a higher level, among the Kabyles of North Africa we are told that women are respected in war, and even in an assault upon a village are not molested. Sometimes the women are so completely free from danger that they come and go without hindrance in the hostile territory, or look on calmly at the battle and perhaps in the end effect a reconciliation. This is the more intelligible when the fighting tribes are exogamous, so that the wife of a warrior on one side is sister or daughter of a champion on the other. In this capacity they act as reconcilers among the Kolarian tribes of Bengal.[1] Often, as among the Australians and the Papuans, they are employed as envoys and are inviolable.[2] But more often, though unmolested in the actual warfare, the fate which awaits them as prisoners is no enviable one. While the men are tortured, eaten, sacrificed or simply killed, the women and children are carried off as slaves.[3] This is one of the commonest methods of dealing with prisoners in the uncivilized world. A slightly higher level is reached when the male captives are allowed to share the fate of their wives and children.

---

[1] Godden, *loc. cit.* [2] Godden, *op. cit.*, p. 13, quoting Sir J. Johnstone.

[3] Prescott, in Schoolcraft, iv. 63. The magical element in this conception comes out well in the point that among the Iroquois the war-chief was generally unmarried (Waitz, iii. 158). The general idea is clearly that women are taboo to fighting men as injuring their powers.

[4] See Schoolcraft-Drake, i. 188.

For there comes a time in social development when the victor sees that a live prisoner is, after all, better than a dead one. Speaking generally, the custom of enslaving male prisoners does not arise until two conditions have been satisfied. On the one hand, a certain level of industrial organization must have been reached, making slave labour desirable, unless slaves are taken to sell to other peoples as by the Kirghiz; on the other, a certain warlike supremacy must have been attained by the slave-holding tribe which has familiarized it with the possession of captives, and so given scope for the habit of utilizing them to grow up.[4]

---

[1] Reclus, 295.

[2] Letourneau, *La Guerre*, p. 36.

[3] Among the North American Indians, while the males (unless adopted) were generally tortured and killed, women and children were more often taken captives, and adopted in a servile position (Waitz, iii. 154, 156). The enslavement of women in Black Africa is referred to below. Similarly, at the other end of the old world, among the Ainus, the result of the frequent night-raids, whereby a quarrel between villages is avenged, is that nearly all the males are killed while the women and children are enslaved, the women often as concubines (Batchelor, 288). In this connection it must be remembered that in forty or more peoples practising marriage by capture as a full reality, the possession of a woman is the direct object of the war or raid.

[4] The proportion of cases in which slaves are taken stands at about one-fifth or one-sixth among the Higher Hunters and the two first grades of agriculture, and moves abruptly to seven-twelfths in the higher grade (*Simpler Peoples*, p. 232).

Perhaps a third negative condition may be added, that the vindictive passions must be sufficiently held in check to prevent their gratification in the moment of victory. It is thus not until the higher savagery, or, perhaps, the lower levels of barbarism, that we find slavery beginning to develop in any marked degree, and universally it has flourished more in races capable of permanent and steady labour than with those which are either hunters or fighters or nothing. It was impossible to create a large slave population among the North American Indians east of the Rockies, and we only find the practice of slave-holding among them in scattered instances. West of the Rockies, on the other hand, slavery is general.[1] In other parts of the savage world it is the ordinary alternative to the extermination of the vanquished. In Oceania, the one method of treatment sometimes replaces the other. Thus, among the Papuans, war is the more savage and cannibalistic where slavery is little practised.[2] Or the two methods may be combined, as in the Solomon Islands, where, in addition to war, a regular trade recruits the slave market, not only, however, for purposes of labour, but also for purposes of cannibalism and human sacrifice. Again, in Fiji the slaves are not worked hard, but are fattened for eating; and throughout Melanesia, on the whole, slavery rather subserves cannibalism than opposes it. In Polynesia, human victims were generally chosen from prisoners of war and from slaves. In tropical South America prisoners may be put to death (and perhaps eaten), enslaved or adopted.[3] Throughout Black Africa the two institutions also coexist, the general rule being that where the men are killed, and perhaps eaten, the women and children may be enslaved. Thus, the Waganda slay all the men and enslave the women and children; the Bali kill all the men; the Wakuafi enslave them; the Bechuana take no prisoners.[4] On the whole, however, through savage and barbarian Africa, with the exception of the Kaffir tribes,[1] slavery is universal and strongly developed, and its principal source of recruitment is war. Throughout the Malay world the enslavement of captives is found as an alternative to cannibalism and head-hunting, while, again, in the tribes of the Asiatic Steppes the captives are often put to death, but slaves or serfs are numerous in proportion to the wealth and fighting power of the people who hold them.

---

[1] *e.g.* it is universal in Oregon (Waitz, iii. 345). Cf. Major Alvord, in Schoolcraft, v. 654, where an instance is given of a slave being sacrificed on his master's death.

[2] Letourneau, *L'Esclavage*, p. 35. According to the same authority (*La Guerre*, pp. 38, 39) head-hunting is common, and a woman's skull is as valuable as a man's. But women and girls are often spared in raids and taken for concubines. According to Kohler (*Z. f. vgl. Rechtswissenschaft*, 1900, p. 364) slavery and a slave-trade occur in certain parts, and slaves are sometimes eaten. Adoption, however, is another possible alternative to cannibalism in some parts of Oceania, *e.g.* in New Caledonia, where slavery is unknown (Letourneau, *La Guerre*, p. 49).

[3] Schmidt, *Z. f. V. R.*, 1898, p. 294.

[4] Post, *Afrik. Jurisprudenz*, i. 85.

We may briefly summarize these characteristics of savage and barbaric war by saying that it is waged, not merely by tribe against tribe, but by individuals against individuals. Its motive is often vengeance, the slaying of a man or the kidnapping of a woman, and whether it ends in the extermination or the enslavement of the beaten party, or even in the milder alternative of their adoption, it is equally directed against the individual persons who constitute the hostile community. The conquered in war stand with their persons and property wholly at the disposal of the victors. Their fate may be harsher or milder. They may be eaten, or sacrificed, or tortured, or simply slain where they stand; their lives may be spared, and they may be led into slavery. But in all these cases—and they form the overwhelming majority—they are treated as rightless and defenceless against those who conquer them. Even in the case where they are adopted as members of the conquering tribe, it can scarcely be said that their personal rights are taken into consideration.

4. In early civilization the character of war is not fundamentally changed in this respect. Only the growth of industry and of a settled order is a stimulus to the general enslavement of prisoners in preference to their destruction, while the development of military power increases the means of capture. Cannibalism generally dies out—the case of Mexico is an exception. Human sacrifice also occurs, but in the majority of instances, if the prisoners are not slain in pure vengeance, they are either carried off as slaves to the conqueror (and many of the great works of early civilization were built by slave labour of this kind) or a tribute is laid upon them, and they become a semi-servile population.

In ancient Egypt we find traces of cannibalism in the pyramidal inscriptions, but they are not specially connected with warfare. Something of the nature of human sacrifice, however, appears to have persisted to a late epoch. No bas relief is more familiar to the traveller in Egypt than that representing the king as a gigantic figure holding up a mace to smite the heads of a bunch of little captives, whom he holds with one hand, in the presence of a triad of gods. This scene, found among some of the very earliest of Egyptian monuments, recurs in the Middle and New Kingdoms.[1] In some cases the bulk of the males were simply exterminated, but chiefs were selected, either for sacrifice or for special vengeance. Thothmes II. (18th Dynasty) records: "This army of his Majesty overthrew these foreigners. They took the life of every male according to all that his Majesty commanded, except that one of those children of the Prince of Kush was brought alive as a live prisoner, with his household, to his Majesty, and placed under the foot of the good god."[2] Again, Amenhotep II. (18th Dynasty) narrates how "His Majesty returned in joy of heart to his father Amen. His hand had struck down the seven chiefs with his mace himself. . . . They were hung up by the feet on the front of the bark of his Majesty. . . . The six of these enemies were hung in front of the walls of Thebes, and the hands in the same manner."[3] The hands in this passage refer to the method of enumerating the slain. Of those who were killed the hands were cut off and sent to the king as a voucher for the number destroyed, and so the number of hands is a recognized expression for the number of slain warriors, and we have representations upon the monuments of heaps of hands of dead captives being brought in and piled before the triumphant king.

---

[1] For very divergent accounts of the Kaffirs both as to treatment of prisoners and as to the extent to which they recognized slavery, see Waitz, ii. 398; Letourneau, *La Guerre*, 96, 97; *id.*, *L'Esclavage*, p. 53.

On the other hand, many of the Egyptian warlike expeditions were apparently mere slave *razzias*. Thus, the officer Se'anch, who opened up Hammamat under the 11th Dynasty, records how he "repaired to the sea and hunted people and hunted cattle, and I came to this region with sixty full-grown people and seventy of their young children at a single time." Similarly, Ûsurtesen III. (12th Dynasty) commemorates his victory over the Nubians: "I have carried off their women and captured their men, for I marched to their well. I slew their oxen, cut down their corn and set fire to it."[1]

---

[1] Ûsurtesen (12th Dynasty) set up a stele commemorating his victories over the peoples beyond the Cataract. Ten of their principal chiefs had passed before Amon as prisoners, their arms tied behind their backs, and had been sacrificed at the foot of the altar by the sovereign himself. There are instances of human sacrifice as late as the Christian epoch (Amélineau, *La Morale Egyptienne*, Introduction, p. 76). Amru, the Mohammedan conqueror of Egypt, forbade a young girl being thrown into the river to get a good inundation. This, of course, is not connected directly with warfare, but as prisoners had been the principal source of sacrifice to the gods in earlier times, the persistence of the idea of human sacrifice throws an ill-omened light upon their lot, even in later days.

[2] Flinders Petrie, *History of Egypt*, 17*th* and 18*th Dynasties*, p. 73.

[3] *ib.*, 156.

The appropriate god, of course, took a part with zest in these proceedings. "The good god exults when he begins to fight; he is joyful when he is to cross the frontier, and is content when he sees blood; he cuts off the heads of his enemies, and an hour of fighting gives him more delight than a day of pleasure." So say the inscriptions of the 19th Dynasty. Mercilessness is idealized. Eulogizing the king, Sinuhit says: "He is a lion who strikes with the claw . . . he has a heart closed to pity; when he sees the multitudes he lets nothing remain behind him." And Sinuhit himself, in narrating a single combat with his foe, expresses with admirable terseness the primitive theory of retaliation: "I shot at him, and my arrow struck in his neck. He cried out and fell upon his nose. I brought down upon him his own battle-axe. . . . Then I took his goods, I seized his cattle. What he had thought to do to me I did it unto him. I seized that which was in his tent; I spoiled his dwelling; I grew great thereby."[2]

Thus the rightlessness of the captured enemy was complete. The ideas of vengeance and retaliation were practically unmitigated, and no softening influence was exerted by religion. Upon the other hand, the idea of a regular treaty with a foreign nation was distinctly understood. Thus we have, in the reign of Rameses II., a treaty with the Hittites, providing for the return of deserters from either country to their original home, and promising that neither the deserter himself nor his wives or children shall be destroyed, nor his mother be slain.[3]

In the sister civilization of the Euphrates and Tigris Valleys more is known of the warlike methods of the relatively barbarous Assyrians than of the relatively civilized Babylonians. Of the Babylonians our principal information comes from their treatment of the Jews, which included their arbitrary removal from their own land into a species of captivity, of the conditions of which we know little, but, with the exception of the putting out of Zedekiah's eyes, we hardly hear of the personal tortures so savagely boasted of by one after another of the Assyrian kings. Towards the Babylonians the Assyrians themselves were mild in comparison with their treatment of other people; but the boasting of the Assyrian conquerors over the horrors perpetrated under their orders, though it appears in certain details to have been exaggerated by mistranslation, will probably always remain the classical exposition of naked and boastful ferocity in warfare. "To the city of Kinabu," says Assur-nasir-pal (883–885 B.C.), "I approached. . . . I captured it. Six hundred of their fighting men I slew with the sword, 3000 of their captives I burned with fire. . . . The people of the country of Nirbu encouraged one another . . . the city of Tela was very strong . . . 3000 of their fighting men I slew with the sword; their spoil, their goods, their oxen and their sheep I carried away; their numerous captives I burned with fire. I captured many of the soldiers alive with the hand. I cut off the hands and feet of some; I cut off the noses, the ears and the fingers of others; the eyes of the numerous soldiers I put out." Again, in another city, "I impaled 700 men upon stakes at the approach of their great gate. The city I overthrew, dug up and reduced to a mound and ruin. Their young men and their maidens I burned as a holocaust."[1] And so on through a list of mutilations, burnings and impalements.

---

[1] Cf. the complacent account in the inscription of Uni (Sayce, *Records of the Past* (new series), vol. ii. p. 7). Sometimes the captives became the spoil of the general himself. Aahmes, in the beginning of the 18th Dynasty, gratefully acknowledges his Majesty's goodness to him in this respect (Flinders Petrie, *op. cit.*, p. 22; cf. Erman, 506).

[2] Sayce, *op. cit.*, vol. ii. p. 22.

[3] The treaty, however, is now held to be more Hittite than Egyptian in origin.

Quarter, of course, was not always refused. Often the king narrates that the captives "took my feet. I laid hold upon them and counted them among the men of my own country." And it should be noted that, in the Assyrian Pantheon, there was at least one god who apparently made for righteousness and mercy. Asshur is always identified with the conquering king, who fights with Asshur, and wins victories for Asshur. But Shamash bestows his favours on the kings for righteousness, and it is at least worth noting that we find Tiglath-Pileser setting captives free in Shamash's presence. The conquered might be carried off as slaves, or they might remain as tributaries, and the unwieldy and short-lived empires of the Near East consisted of such tributary states, frequently rebelling, and reduced by great barbarity to submission and the payment of further tribute. Probably the increased number of slaves in later, as compared with earlier Babylonian times, may be ascribed to a long course of successful warfare.

---

[1] Sayce, *Records of the Past*, ii. 145, 159, etc.

5. The religious motive which, among the Assyrians and Egyptians, merely adds emphasis and a certain exaltation to warlike ferocity, became among the Hebrews a reason for carrying the savage practices of extermination to the extreme. We are perhaps hardly to assume that the primitive tribes who conquered Canaan were in reality so bloodthirsty as their historians represent them. The destruction, as commentators say, takes place on paper, but it is none the less ethically significant. The rules of war are laid down in the twentieth chapter of Deuteronomy. A distinction is drawn between the cities which are far off and those of the Canaanites. In the former case the Hebrews were first to proclaim peace to the city to which they drew nigh, and "if it make thee answer of peace, and open unto thee, then it shall be that all the people that is found therein shall become tributary unto thee and shall serve thee." This is the milder fate. But if it makes war and the Lord deliver it "into thine hand, thou shalt smite every male thereof with the edge of the sword; but the women and the little ones, and the cattle, and all that is in the city, even all the spoil thereof, shalt thou take for a prey unto thyself." This corresponds closely enough to what we have found to be the most common practice of barbarian warfare—tribute or forced labour from those who submit voluntarily, the massacre of the males and enslavement of women and children in other cases. A typical case is narrated, presumably as an example,[1] in Numbers, where all the male Midianites are slain, but the women and children are taken; but Moses is wroth with the host for saving all the women alive, on the ground that they cause Israel to trespass, and he bids them kill every male among the little ones and every woman, except the virgins, whom they may keep for themselves. Here the fear of religious contamination comes in, and this is carried to an extreme in the case of the Canaanite cities with which we have now to deal. They were to be utterly destroyed. "Of the cities of these peoples which the Lord thy God giveth thee for an inheritance, thou shalt save alive nothing that breatheth." And so, in the conquest of Canaan, Jericho is "devoted," that is to say, it is made over absolutely to Jahveh; the city with everything belonging to it is sacred, and so taboo to man, and a curse is laid upon the site, so that it can never be built up again. When Achan secretes a wedge of gold taken from the spoil, he communicates the curse to the whole host, and the people suffer defeat until they remove from them the accursed thing. In point of fact this religious extermination was, of course, very

---

[1] Num. xxxi. 8, 9.

incomplete, for the Canaanites remained, and we find Solomon[1] levying a tribute of bond service upon them. But there was much savage barbarity, whether from religious motives or merely from revenge. Joab smote every male in Edom,[2] and when he took Rabbah, " he brought forth the people that were therein, and put them under saws, and under harrows of iron, and under axes of iron, and made them pass through the brick-kiln,[3] and thus did he unto all the cities of the children of Ammon."[4]

Indiscriminate massacres were sometimes practised in the civil wars of the people, as in the case of the male Ephraimites who could not pronounce the famous shibboleth,[5] and of the Benjamites,[6] and the people of Jabesh-gilead who were destroyed, men, women and children, for not joining in the destruction of the Benjamites.[7] Only in two points does a higher ethical conception emerge. First, there is the provision for a female captive in Deuteronomy, referred to in a previous chapter. She was to have her time for mourning, and, if married by her captor, was not to be sold nor dealt with as a slave, " because thou hast humbled her." Here there is a touch of humanity leavening general barbarism. Another point is the observance of the oath made to the children of Gibeon. They deceived Joshua into thinking they were strangers, but the covenant with them was to be observed to the letter, and so they became hewers of wood and drawers of water unto all the congregation. The oath, that is to say, was inviolable though taken in covenant with a foreigner and a heathen.

The spirit of retaliation and the taking of captives persists even in the post-exilic writer of Isaiah xiii. and xiv. : " They shall take them captive whose captives they were, and they shall rule over their oppressors." [1] Yet Micah is one of the first to dream of a universal peace. God "shall judge between many peoples, and shall reprove strong nations afar off, and they shall beat their swords into ploughshares and their spears into pruning-hooks; nation shall not lift up sword against nation, neither shall they learn war any more." With this passage, which is repeated in almost the same terms in the post-exilic "Isaiah," we find the religion of the Jews turning its face away from the fierce exclusiveness which led merely to an idealization of the most savage elements of warfare towards those hopes of a world-embracing religion, which was destined to so mighty a growth, though the fruits of universal peace have not yet been borne.

---

[1] 1 Kings ix. 20, 21.

[2] 1 Kings xi. 15.

[3] The Revised Version mercifully suggests a slight change in the text, which would run: " Made them labour at the brick mould " (2 Sam. xii. 31).

[4] 1 Chronicles xx. 3.

[5] Judges xii. 6.

[6] Judges xx. and xxi.

[7] The whole story of Judges xx. and xxi. is complex and probably derived by putting different and incompatible versions together. It is intended to represent an execution of justice for a wicked act upon a tribe, but it incidentally reveals the barbarities mentioned in the text. It is to be observed, however, that the Israelites shrink from the utter destruction of a tribe, and so they preserve four hundred virgins from the people of Jabesh-gilead as wives for the surviving Benjamites, whose women had been destroyed, while they further encourage the Benjamites to carry off maidens from the feast at Shiloh to make up for deficiencies, an intermingling of crude barbarisms with an attempt at a moral which could hardly be surpassed for confusion.

6. So far we have dealt with the essentially warlike peoples. As we go further east we come to that part of the human race in which the inherent preference of peace to war, professed by other peoples, appears to be more of a reality. Both in Hindu and in Chinese ethics, widely different as they are in other respects, war takes a lower place than in Western civilization. India, of course, had its heroic age. War is frequently mentioned in the Vedas. War chariots were used, and spears, swords, knives and defensive armour. Probably the Aryan invaders of India did not differ much in the rules of warfare from their kindred in other parts of the world. In the Mahabharata we find the fighting spirit idealized. Chivalry is recognized, and honourable and dishonourable methods of warfare are distinguished.

> "Red with rage, Bhima stepped up to the king-lion, who lay outstretched, with his club beside him, beat in his skull with his foot, and said: 'We have not laid fire to burn our enemies, nor cheated them in the game, nor outraged their wives; by the strength of our arms alone we destroy our enemies.'" [2]

The victors, however, carry off slave-women along with the booty; so that, though there might be rules of chivalry in the fight, the prisoners, as in barbaric warfare, were at the disposal of the conqueror. But not at his absolute disposal; quarter for the vanquished and general respect for women, though they appear to have been lawfully part of the spoil, are strongly insisted upon. Manu has, in fact, a complete, though brief, legal code of warfare.

> When he fights with his foes in battle, let him not strike with weapons concealed (in wood), nor with (such as are) barbed,

---

[1] Isaiah xiv. 2.

[2] Duncker, *History of Antiquity*, vol. iv. p. 93.

poisoned, or the points of which are blazing with fire. Let him not strike one who (in flight) has climbed on an eminence, nor a eunuch, nor one who joins the palms of his hands (in supplication), nor one who (flees) with flying hair, nor one who sits down, nor one who says, "I am thine." Nor one who sleeps, nor one who has lost his coat of mail, nor one who is naked, nor one who is disarmed, nor one who looks on without taking part in the fight, nor one who is fighting with another (foe). Nor one whose weapons are broken, nor one afflicted (with sorrow), nor one who has been grievously wounded, nor one who is in fear, nor one who has turned to flight; (but in all these cases let him) remember the duty (of honourable warriors).[1]

This recognition of chivalrous usage and limitation of the use of barbarous methods may be associated with that general tendency of Indian thought which put the priestly caste above the warrior. Purity of life is the first object, and the spiritual law, involving, as it does at its best, careful abstinence from injury to every living creature, man or beast, becomes an ideal of life which, in the Brahmanic teaching, ranks above the old knightly ideal.[2] This ideal of peace and universal beneficence was further emphasized by Buddhism, to which the taking of human life under any conditions is a crime.

Passing still further east, we find that Chinese thinkers, so different from Indian in other respects, agree with them in their attitude to warfare. Yet Chinese warfare itself was, at any rate in early times, thoroughly barbaric. Few prisoners were made; the vanquished chiefs were put to death, while the common soldiers were released after an ear had been cut off. The left ears of the slain were also cut off, no doubt for purposes of reckoning.[3] Captives, however, were at times made slaves and were also tortured. We find allusions to both these practices in the classical books, *e.g.* in the *She-King*—

"With our prisoners for the question and our captive crowd we return."[4]

Again—

"My sorrowing heart is very sad,
I think of my unfortunate position.
The innocent people will all be reduced to servitude with me."[5]

---

[1] Manu, vii. sec. 90–93.

[2] Duncker, *op. cit.*, 107.

[3] Biot, in the *Journal Asiatique*, translated in Legge's Prolegomena to the *She-King*, chap. iv. p. 158.

[4] *She-King*, Part II. Book I. Ode 8, Stanza 6. On this Dr. Legge notes: "Those who would be questioned" (put to the torture) "indicate, we may suppose, chiefs of the Heen-yun; the 'crowd of captives,' the multitude of their followers."

[5] Part II. Book IV. Ode 8, Stanza 3.

And again—

> "The engines of onfall and assault were gently applied
> Against the walls of Ts'ung, high and great.
> Captives for the question were brought in one after another.
> The left ears (of the slain) were taken leisurely." [1]

The classical books, however, more than once represent the superiority of peaceful to warlike methods. The emperor or prince who gives an example of justice and graciousness is represented as attracting the people to him, and warlike chiefs are depicted as being influenced by an example of goodwill and readiness to give up a point. This is brought out very quaintly in such stories as those of the chiefs of Joo and Juy, who had a quarrel about a strip of territory, which they went to lay before the lord of Chow. But "as soon as they entered his territory, they saw the ploughers readily yielding the furrow, and travellers yielding the path, to one another"; and in fact every one giving way to every one else. All this made them ashamed of their own quarrel. They became reunited, and the affair being noised abroad, more than forty states tendered their submission to Chow.[2] But in this glorification of the virtues of an excellent passivity and of conquering by the meek surrender of claims, we come perilously near to a thin excuse for mere cowardice or failure. The reader must judge in which way the following story may be interpreted. When the Emperor Yu could not conquer the rebels of Meaou, he was admonished by Yih that "pride brings loss, and humility receives increase." Moved by the "excellent words," he drew off his army and "set about diffusing his accomplishments and virtue more widely." The better part of valour had its reward. "In seventy days the Prince of Meaou came to make his submission." One would like to know the precise nature of the "submission." [3]

In the teaching of Mencius, however, there is no doubt at all about the strenuous opposition to war and militarism. The protests of this great teacher against the use of force were repeated and strenuous. They were based upon the purest of humanitarian principles and applied with great psychological insight. When Mencius saw King Seuen much touched by the frightened appearance of an ox being led to the sacrifice and ordering that a sheep should be substituted for it, he told him very justly that it was because "you saw the oxen and had not seen the sheep." A superior man, he went on, cannot eat the animals whose dying cries he has heard, and so he keeps away from his cook-room. Mencius had thus grasped the fundamental fact of the part played by want of imagination in maintaining warfare. He proceeds to point out that here "is kindness sufficient to reach to animals, and no benefits are extended from it to the people."[1] The king should begin, he says, with reverence to age and kindness to youth in his own family, and the example would spread and tend to humanize the people. Instead of doing this the king prepares for war. Does this give him pleasure? The king admits that it does not, but says he does it to "seek for what I greatly desire." Mencius asks for what reason he desires it—for lack of food, clothing or sounds? No; it is for none of these. "You wish to enlarge your territories . . . to rule the middle kingdom and to attract to you the barbarous tribes that surround it, but to do what you do to seek for what you desire is like climbing a tree to seek for fish." In fact, it is worse, for it is calamitous. "Now, if your Majesty will institute a government whose action should all be benevolent, this would cause all the officers in the empire to wish to stand in your Majesty's court, and the farmers all to wish to plough in your Majesty's fields, and the merchants both travelling and stationary, all to wish to store their goods in your Majesty's market-places . . . and all throughout the empire who feel aggrieved by their rulers to wish to come and complain to your Majesty." In short, Mencius' prescription for making one's self a universal monarch was to prove one's self the best and most just monarch.[2] He would disallow the annexation of conquered territory except by the will of the conquered people. When King Seuen had conquered Yen, he asked Mencius if he should take possession of it. Mencius replied that, if the people of Yen would be pleased with his doing so, let him do it; otherwise not.[3] War itself Mencius denounces as a crime, and those who make war as worthy of death and worse. Confucius, he said, would have nothing to do with the ministers of oppressive princes; "how much more would he have rejected those who are vehement to fight for their prince. When contentions about territory are the ground on which they fight, they slaughter men until the fields are filled with them . . . this is what is called leading on the land to devour human flesh." Death, he says, is not enough for such a crime, and those who are skilful to fight should suffer the highest punishment. Again, "to employ an uninstructed people in war may be said to be destroying the people. . . . Though by a single battle you should subdue Tse and get possession of Nan-yan, the thing ought not to be done." [1] The mere transfer of territory is wrong, but the bloodshed by which it is achieved is worse. "If it were merely taking the place from the one state to give it to the other, a benevolent man would not do it; how much less will he do so when the end is to be sought by the slaughter of men." [2] As to ministers who advise a warlike policy with a view to conquest, they might be tolerated in these degenerate days, but in the good old times they would have been called robbers of the people. Mencius said: "Those who nowadays serve their sovereigns, say, 'We can for our sovereign enlarge the limits of the cultivated ground and fill his treasuries and arsenals.' Such persons are nowadays called 'Good Ministers,' but anciently they were called 'Robbers of the People.'" [3] The generals Mencius involved in one condemnation with the warlike ministers. "There are men who say, 'I am skilful at marshalling troops; I am skilful at conducting a battle.' They are great criminals." [4] The warlike Western world has scarcely known a more vigorous and sweeping protest against warfare and everything connected with it and every principle upon which it is based. And if it is said that the Chinese Empire, under the inspiration of such teaching, has ceased to be able adequately to defend itself against barbarians, it should also be remembered that, under the Chinese system, a population larger than that of Europe live in permanent peace with one another, and that they have, in a sense, as their own religious books recommend, absorbed those who have conquered them by peaceful arts.

---

[1] Part III. Book I. Ode 7, Stanza 8. On this Dr. Legge notes: "When prisoners refused to submit, they were put to death and their left ears taken off."

[2] *She-King*, vol. ii. p. 441, note.

[3] *Shoo-King*, part ii. book ii., iii. 21.

---

[1] Mencius, Book I. part i. chap. vii. par. 8–10.

[2] Book I. part i. chap. vii.

[3] Book I. part ii. chap x.

7. From these ideals of peace we return to the fighting nations of the Western world. In Homeric Greece wars were often little more than raids for women and cattle lifting, or they were reprisals for similar raids by a hostile clan. Piracy was held to be improper and displeasing to the gods, but not shameful, and Thucydides remarks that to ask a stranger whether he was a pirate was apparently not considered an act of discourtesy.[5] In a captured town the normal fate of the men was to be slain, and of the women to be carried off as bond slaves. Achilles boasts of the pillage of which he has been guilty.[6] Quarter may be

---

[1] Book IV. part i. chap. xiv.; Book VI. part ii. chap. viii.

[2] *ib.*, sec. 8.

[3] Book VI. part ii. chap. ix.

[4] Book VII. part ii. chap. iv.

[5] Thucyd., i. 5.

[6] *Iliad*, IX. 325, etc.

refused at will. Before the death of Patroclus Achilles often accepted ransom, but after it he declares his intention of refusing all quarter and rejects Lycaon's prayers for his life. The corpse of the dead is insulted; Hector is dragged at the chariot wheels, and twelve youths are sacrificed to the spirit of Patroclus. Even in the historical period prisoners of war were unconditionally the property of the conqueror.[1] Custom enjoined quarter,[2] but prisoners were often killed.[3] Generally prisoners were held for exchange or ransom,[4] or sold as slaves. The booty was divided, and a tithe was given to the gods. In the case of the Medising cities the patriot Greeks took oath to devote a tithe of their goods to Delphi. But generally the terms obtained by a surrendered city depended upon the Homologia.[5] When a town was stormed all the males were often put to the sword and the women and children enslaved.[6] At the capture of Platæa the Spartans put all the prisoners to death after a judicial trial, and the Athenians were no better. On the suppression of the revolt of Chios all the men were slain and the women and children enslaved. The same fate befell Melos,[7] while at Mende the generals intervened to prevent the massacre.[8] At times the dead were mutilated,[9] and the same fate might even befall the living.[10] The massacres did not always go without a protest. In the famous case of Mitylene, the destruction of the entire city, after having been voted by the assembly, was rescinded by the redoubled efforts of the friends of the Mityleneans, who, by the aid of a specially swift trireme, overtook the first order in time to prevent its execution, so that only 1000 Mityleneans were put to death.

On the other hand, the Greeks were perhaps the first people to develop something like a regular international law. Feuds between neighbours were replaced by *spondæ*, which passed ultimately into alliances, generally of a defensive character, and for a specified number of years.[1] But, further than this, they developed a regular system of arbitration. Periander of Corinth arbitrated between Athens and Mitylene as to the possession of Sigeum. In the sixth century Sparta arbitrated between Athens and Megara, and appeals to Delphi were not uncommon.[2] Sometimes states were pledged by oath or by the deposit of a sum of money to abide by arbitration, but in other cases the loyal acceptance of the decision was a matter of goodwill, and was sometimes refused, as in the case of Thebes [3] and of Elis.[4]

---

[1] Busolt, *Handbuch der klassischen Altertumswissenschaft*, Bd. iv. p. 59. Aristotle, *Politics*, i. 2–6, 1255a.

[2] Thucyd, iii. 58, 66, 67. The surrendered Platæans plead that "the custom of Hellas does not allow the suppliant to be put to death." The plea, however, was not allowed.

[3] Thucyd., i. 30; ii. 67; iii. 32. Xenophon, *Hellenics*, II. i. 32. Plutarch, *Lysander* (tr. Langhorne), p. 311.

[4] Thucyd., ii. 103; iv. 69; v. 3. Herodt., i. 89.

[5] In the case of Potidæa, the men were allowed to leave the city with one garment, the women with two. The Athenians blamed the general for concluding the agreement instead of forcing a surrender at discretion (Thucyd., ii. 70).

[6] *Iliad*, IX. 590. Thucyd., iii. 28; v. 3, 32, 116.

[7] Thucyd., v. 116.

[8] Thucyd., iv. 130.

[9] Xenophon, *Anabasis*, iii. 4.

[10] Xenophon, *Hellenics*, ii. 1

Furthermore, the instances of severity quoted above represent the darkest side of Greek warfare. There was a better spirit at work which recognized certain common laws of the Hellenes, "unwritten laws" prescribing a measure of justice in inter-state dealings, and of moderation and humanity to the vanquished. The conquered Platæans appeal, though they appeal in vain, to the custom of Hellas, which does not allow suppliants to be put to death.[5] The dealings of the Athenians with Melos are scathingly exposed by Thucydides by the absolute contempt of right which he puts into the mouths of the apologists for Athens, and the incident is dramatically set immediately before the narrative of the Syracusan expedition, in which the impieties of Athenian aggression were heavily punished. Mr. Murray considers that the same incident was the immediate occasion of Euripides' moving representation of the sufferings of the "Trojan Women" played in the following year. Further, the whole principle of Greek warfare was challenged by the philosophers. The enslavement of Greek prisoners, the stripping of the slain, the erection of trophies in temples, the ravaging of the land (apart from carrying off the crop of the season) and the burning of houses are all condemned by Plato. The refusal of quarter is not explicitly mentioned, from which we may infer that at least as a matter of principle this was sufficiently recognized as a wrong in the fourth century. On the other hand, this milder practice is only insisted on in wars between Greek and Greek. These should be conducted as civil strife is at present—that is to say, with the mitigations specified, while in future, Greeks should behave to barbarians as they now do to one another.[6] Nor was Plato alone in his attitude. Aristotle, while recording that the law "is an agreement wherein they say that what is conquered in war is the property of the conqueror," records that many jurists bring a charge as it were of illegality against this law, and both jurists and philosophers are divided on the point.[1] Aristotle himself points out that the origin of a war may not be just, and "no one would say that he is a slave who does not deserve to be a slave, for if so those who are held noblest might be slaves and sons of slaves if they happened to be captured and sold." The truth is that the Greeks "do not mean to call themselves slaves, but the barbarians." The solution is that there are natural slaves, who are slaves everywhere. In other words, the barbarian is ordained by nature as slave to the Hellene, but the Hellenes should be free.[2] In this argument Aristotle clearly conceives himself to be merely stating explicitly and consistently the principle which is confusedly held in the uninstructed thought of the period. He thus represents the stage which the best Greek ethics really attained in this direction—an acceptance of a higher rule of warfare enjoining respect for the persons of the conquered (Plato's argument would add for their property as well) within the limits of Hellas.[3] Outside these limits the old rules of barbaric warfare persist unaltered.

---

[1] Busolt, *op. cit.*, p. 54.
[2] Thucyd., i. 28.
[3] Herodt., vi. 108.
[4] Thucyd., v. 31.
[5] Thucyd., iii. 58.
[6] Observe, however, that this summary of the argument is put into the mouth of Glaucon, not of Socrates. Possibly Plato would have been willing to preach a more comprehensive humanity, but feared to push the argument too far (*Republic*, v. 469–471).

At Rome a defeated enemy was in principle rightless. The very type and exemplar of property is that which is captured from an enemy. Stranger and enemy are identical terms. The stranger can have no rights except through the protection of a citizen, and even apart from war and hostility it is a juristic maxim that a member of a foreign community not bound to Rome by any treaty might be lawfully enslaved; in other words, all legal rights are confined to citizens and those to whom their protection is extended, and the alien, and therefore still more the captured foeman, is at the disposal of the conqueror. In point of fact the conquered were often put to death in great numbers, for example, the population of Vacca by Metellus in the Jugurthine war.[4] The same fate befell many towns of Gaul under the comparatively clement Julius Cæsar. The taking of Ilurgis in Spain was succeeded by a general massacre in which neither women nor children were spared.[5] Tacitus, describing the ravaging of the Marsi by Germanicus, says that neither sex nor age were grounds of mercy.[1] The good Emperor Titus massacred or sold as slaves all the captives at the taking of Jerusalem.[2]

---

[1] *τοῦτο δὴ τὸ δίκαιον πολλοὶ τῶν ἐν τοῖς νόμοις ὥσπερ ῥήτορα γράφονται παρανόμων . . . καὶ τοῖς μὲν οὕτω δοκεῖ τοῖς δ' ἐκείνως, καὶ τῶν σοφῶν* (Aristotle, *Politics*, i., vi. 2).

[2] *ib.*, pars. 4–6.

[3] The principle found practical expression in the oath of the Delphian Amphictyony not to destroy any allied state, nor to cut off its water in war or peace (Busolt, p. 65).

[4] Letourneau, *La Guerre*, p. 466.

[5] Grotius, iii. 4, 9, quoting Appian.

But these are extreme cases. There is no reason to doubt that the general feeling of the Roman world condemned excesses of barbarity. Livy makes Camillus say that his soldiers direct their arms not against that age which is spared even in the capture of a town, but against armed men.[3] The slaughter of non-combatants, old men, women and children, is frequently spoken of in terms of condemnation, even of horror,[4] and Livy's words, "jure belli in armatos repugnantesque cædes,"[5] imply the full limitation of the right of killing to active combatants as understood in modern warfare. The violation of women, if frequently allowed, was as frequently condemned, and measures were by some generals taken to prevent it.[6] Upon the whole, personal barbarity, indiscriminate massacre, the refusal of quarter, the violation of women, and the slaying of captives, though practised in times of excitement or loose discipline, are condemned by the better minds as contrary to the *jus belli*.[7] On the other hand, the enslavement of prisoners, if desired, and the confiscation of property were admitted to be regular.[8]

The importation of slaves into Italy on a large scale, owing to war and the slave trade, revolutionized the Roman economic system, and led thereby to the fall of the Republic. But, instead of being enslaved, the conquered people might become tributary—*dediticii*. The formula in this case expresses the absoluteness of surrender exacted by an ancient conqueror: "I give my person, my town, my land, the water which runs there, my boundary gods, my temples, my movables, all the things which belong to the gods, to the Roman people."[1] The people who surrendered on these terms retained their lands on payment of tribute and accepted a Roman governor. They had in strictness no rights as against the Roman Government, and whatever liberties were accorded to them were reversible at will.[2] But a more liberal system grew up as the Roman conquests were extended. In some cases a community was allowed to retain its own government while brought under the political hegemony of Rome as an ally, with rights secured by fœdus. A considerable measure of local self-government was left to the civilized communities fully incorporated in the Empire, and the spread of Roman civilization was regularly marked by the extension of municipal privileges. Further, civic rights were extended to the subjects of Rome, first in the form of the *jus Latinum*, which from early days had conferred the principal civil rights on inhabitants of the cities of Latium, and finally, as civilized order advanced, of the full Roman franchise, which, though its political value disappeared with the fall of the Republic, placed subjects and masters on equal terms before the law. The boast of Virgil that Rome spared the submissive and warred down the proud was not wholly without justification, and the Roman Empire gradually approached the ideal of a world state, in which distinctions of nationality carried no difference of privilege, but citizenship was extended to all free men. There was in this a certain approach to universalism which might hold within it some promise, if not of an abolition of war, at any rate of a reconstitution of its character.

---

[1] Grotius, iii. chap. iv. section 9, and authorities there cited, especially the cynical remark of Horace which sums up the whole matter: "Vendere cum possis captivum occidere noli" (Ep. xvi. 69).

[2] Letourneau, *La Guerre*, p. 467, quoting Josephus, *Bell. Jud.*, Book VI. chap. xlv.

[3] Livy, v. 27, and other passages quoted in Grotius, iii. 11.

[4] Instances, Greek and Latin, in Grotius, *loc. cit.*

[5] Livy, xxviii. 23. Grotius, *ib.* Grotius further cites Sallust (*Jugurthine War*, chap. xcvi.) for a condemnation of the slaughter of men after surrender as *contra jus belli*. Elsewhere (par. 6) he quotes Cicero as saying that captives who have not shown cruelty should be spared, and Seneca as insisting that an enemy should be set free, and even held in honour, if he has fought for honourable reasons.

[6] *e. g.* Marcellus and Scipio. Grotius, Book III. chap. iv. par. 19.

[7] An exception must be admitted in the case of the vanquished king or general, who might be, and not infrequently was, put to death in the Mamertine prison before the sacrifice to Capitoline Jupiter was proceeded with (Grotius, iii. 11, 1).

[8] See Livy, cited in Grotius, iii. 5, 1: "Esse quædam belli jura quæ ut facere ita pati sit fas: sata exuri, dirui tecta: prædas hominuun pecorumque agi."

8. We have now to consider the bearing of universalism, as represented by the world religions, upon the moralities of war. In the teaching of the Koran it appears to be assumed that true believers will live at peace, while they will conquer and subdue the unbeliever. "If the two parties of believers quarrel, then make peace between them; and if one of the twain outrages the other, then fight the party that has committed the outrage until it return to God's bidding; and if it do return, then make peace between them with equity and be just. Verily God loves the just. The believers are but brothers, so make peace between your two brethren and fear God, haply ye may obtain mercy."[3] No Moslem captive might be enslaved.[4] Very different was the

---

[1] Letourneau, p. 468.
[2] Mommsen, *Hist. of Rome*, Book IV. chap. vii.
[3] Koran, *Sacred Books of the East*, vol. ix. chap. xlix.
[4] Grotius, iii. 7, ix. 2.

attitude to unbelievers. "And when ye meet those who misbelieve, then striking off heads until ye have massacred them, and bind fast the bonds." Theoretically, in fact, there is perpetual war with all countries which have not embraced Islam. But there are degrees. No compromise was possible with Arabian idolaters or with apostates. Non-Arabian idolaters might be reduced to slavery, and, generally speaking, captives might be slain, since the Prophet did so, and slaying them terminates wickedness, but if a captive became a Moslem on the battlefield, he might not be put to death, but in this case he might still be enslaved, as the reason for enslaving him, that is to say, securing his person, came into operation before the change of faith. Slavery, then, was the second alternative, and beyond this there was the milder possibility that the captive might be released as a *Zimmi*—that is to say, as a non-Moslem subject, liable to tribute. In any case a woman was not to be slain in war. Mohammedan teaching, then, rests on the distinction between Moslem and non-Moslem. Within the Moslem world it looks forward to universal peace and forbids the enslavement of the captive. Outside that world it allows not only enslavement, but the refusal of quarter.

The character and effects of Christian teaching are somewhat complex. While the Gospels pronounced definitely against violence in any shape or form, the Church accommodated her teaching to the practice of a warlike age, and Augustine upholds the soldier's profession, and endeavours to lay down the conditions upon which war is justified. "To wage war is not a crime, but to wage war for the sake of booty."[1] There is no moral distinction between open fighting and ambuscade in a just war, "but just wars are commonly defined as those which avenge injuries, if any race or state which is to be attacked in war has either neglected to punish wrongs done by its own citizens or to retrieve what has been wrongfully carried off."[2] Again, the kind of war ordained by God is just. Ambrose, strongly denouncing the principle of non-resistance, declares that he who does not defend a friend is as bad as the aggressor.[3] On the other hand, malice, cruelty and vengeance, the implacable spirit, savagery in insurrection (*feritas rebellandi*) and the lust of dominion are condemned by Augustine.[4] The purport of these distinctions, for what they are worth, is to condemn aggression and restrict warfare to the defensive. Private warfare, moreover, was persistently combated by the Church,[1] and with regard to the rules of warfare generally, the canons dealing with the treatment of the enemy in person or property mark a distinct advance in European custom. To enslave a fellow-Christian or to put him to death, except in the actual fighting, was forbidden from an early date,[2] and Augustine lays down, though not in very forcible language, the broad principle of later warfare, that the slaughter of the enemy is to be limited by necessity (*hostem pugnantem necessitas deprimat non voluntas*).[3] From this it follows that the lives of non-combatants, as well as captives, should be spared. Women and children are therefore secured from violence. Priests naturally enjoyed the same privilege, and it was extended by the Canon Law to husbandmen and tradesmen.[4] Even as to the practice of ransom, which grew up when quarter came to be allowed, the Canon Law had its doubts, to be overcome by a lawyer's quibble. "A captive's goods are unjustly extorted from him, but are justly proffered to redeem his life," is the solution proposed by Gratian;[5] a solution which in practice justifies ransom, and in theory must be taken to admit that the captive's life is forfeit.

---

[1] Serm. xix. Quoted by Gratian, *Corpus Juris*, 893, but apparently of doubtful authenticity.

[2] *Corpus Juris*, 894. Reading "si qua gens vel civitas quæ bello petenda est."

[3] *ib.*, 898.

[4] Contra Manichæos, *Corpus Juris*, 892.

How far these relatively enlightened principles were from restraining the barbarity of the Middle Ages every one knows. From the decline of the Western Empire to the Peace of Westphalia the internal wars of Western Europe present a series of barbarities and horrors which fully equal those of the Greek or the Italian peoples, and Grotius, in his search for instances of magnanimity, generosity and the reprobation of methods of savagery, more often quotes Greek or Roman generals than those of the Middle Ages or of his own time. Yet the idea of chivalry—the cult of the very *parfait gentil* knight, sworn to succour the oppressed, to defend the women and children, and to avoid all unknightly deeds—is a true product of the Middle Ages, and its appearance side by side with the barbarities of actual warfare is characteristic of the period. In the generations before Grotius' own time and during his life the savagery of warfare had gathered itself for a supreme effort, and under the guiding genius of an Alva and a Tilly had shown what men could do to one another. But with the Peace of Westphalia the period of the religious wars came to an end. Men were sickened with horrors, and were the more ready to listen to those who, like Grotius, had a rule to propound whereby even in war men might be saved from becoming fiends. The devastation of the Palatinate, which half-a-century earlier would have passed unnoticed as an ordinary incident of war, coming in 1689, caused a thrill of horror in Europe, and from that time onwards the practice of war underwent a slow and insufficient, but still a real amendment.

---

[1] According to Westermarck, however, with comparatively little success (*Moral Ideas*, p. 356 seq.).

[2] Grotius, *loc. cit.*, quoting Gregoras, who lays it down as a rule holding among Christians, *δια τὴν τῆς πίστεως ταὐτοτήτα*, recognized not only among Romans and Thessalonians, but among Illyrians, Triballi, and Bulgarians, *τὰ μὲν πράγματα μόνα σκυλεύειν τὰ δὲ σώματα μὴ ἀνδραποδίζεσθαι, μηδὲ φονεύειν ἔξω τῆς πολεμικῆς παρατάξεως μηδένα.*

[3] Augustine, Ep. 207. *C. J.*, 892.

[4] Grotius, iii. 11, 12. Hall (*A Treatise on International Law*, p. 397) refers to the Canon de Treuga (*Decret. Greg.*, p. 203, lib. i., Tit. xxxiv. cap. 2), which laid down that monks, merchants, husbandmen and their animals, travellers, etc., are not to be killed. Hall also cites Franciscus à Victoria as maintaining "quod etiam in bello contra Turcos non licet interficere infantes. Imo nec feminas inter infideles." The tradition lingered long that a garrison which held out *à l'outrance* might lawfully be massacred. This is discussed by Grotius, iii. 11, 16, etc. See Hall, 400.

[5] Grat., *Corpus Juris*, 896.

9. The principle to which Grotius appealed was the Law of Nature, which, however fictitious in the form in which it was conceived by him and his contemporaries, expressed the profound ethical truth that the rights and duties of men are not circumscribed by the limitations of positive law or of revelation, but rest upon certain universal attributes of humanity. But this principle was pregnant with great consequences. By resting rights and duties on human nature as such, it gets below the distinction of compatriot and foreigner and destroys the basis of group-morality. Once grant that an enemy does not cease to be a man, to whom as a man certain primary duties are owing, and we have a principle which undermines the whole structure of the earlier ethics of warfare. As a human being possessed of human rights, the enemy comes under the ordinary civilized conceptions of justice. He cannot fairly be punished for the delinquencies of his nation. Grant, what every belligerent assumes, that his own cause is just and that of the opponent indefensible, grant that this is proved to the full satisfaction of the military conscience by the verdict of the god of battles, still it is only the hostile government that is in fault. The citizen of the conquered country, even the soldier of the beaten army, is not in fault. He has merely done his duty as a patriot, and to make him suffer either in person or property for the delinquencies of his government would be to apply the barbaric principle of collective responsibility. The custom of nations,

and in recent times explicit Conventions, especially the Geneva Convention of 1864 and the Hague Conventions of 1899 and 1907,[1] have built up an extensive theoretical code for the protection of individuals. The employment of poison, killing by treachery, the refusal of quarter, the use of weapons "of a nature to cause superfluous injury," to compel people to serve against their own country and to destroy or seize property unless it "be imperatively demanded by the necessities of war," are things forbidden by the Hague Convention of 1907, art. 23. The bombardment of undefended places is forbidden by art. 25, pillage by arts. 28 and 47, collective penalties, pecuniary or other, for the acts of individuals by art. 50. Art. 46 stipulates that "Family honour and rights, the lives of individuals and private property, as well as religious convictions and liberty of worship, must be respected. Private property cannot be confiscated," money and requisitions in kind can only be levied for purposes of administration or for military necessities (arts. 48 and 52). The treatment of prisoners and the wounded is elaborately safeguarded. If much of this reads like a satire on the actualities of modern warfare it is due to two causes. In the first place, there is no authority whatever but the goodwill of the authorities or the fear of reprisals[2] to enforce the code. In the second place, military necessity is a cloak covering a multitude of sins. Thus, it is illegal to destroy private property, but military necessity may require and justify the devastation of an entire country.[3] In practice it is to be feared that modern war inflicts no less suffering on the general population while it lasts than the warfare of old days. But this is not a question which can be judged in a dry light in the autumn of 1914. In ethical theory, and in the customs which it has codified, the civilized world has sought to safeguard the obligations of humanity and the rights of the person. Though the citizens of a hostile state are enemies war is not waged indiscriminately upon individuals, but is "a contention of states[4] through their armed forces,"[1] and neither its progress nor its victorious close is to deprive the vanquished of those rights which civilized codes accept as inherent in human beings.

---

[1] See *The Hague Peace Conference*, by A. P. Higgins, IV., "The Laws and Customs of War on Land."

[2] Reprisals on innocent persons are not forbidden and the Hague Conventions are silent about hostages. But the practice of executing innocent men in cold blood for the misdeeds of others is one of the most hideous practices of modern war and goes far to deprive non-combatants of their security. On Reprisals, see Oppenheim, *Internat. Law*, vol. ii. p. 305, and on Hostages, p. 317, etc.

[3] Oppenhein, vol. ii. p. 190.

[4] Oppenheim, ii. 63. The doctrine of Rousseau, that war is a relation between states and not between individuals, goes a step further, and is largely accepted on the Continent. British and American writers regard

10. In emancipating individual rights from the violence of war, the international lawyers were merely applying the conception of the rights of the individual personality on which modern ethics rest. The further question remained, whether the various groups of mankind have as groups assignable rights. Has a state rights as against other states? Has a nationality which has no independent government a right as against the state or empire of which it forms a part? Has a locality rights as against the country within which it lies? Confining ourselves for the present to the first question, we may point out that the utter denial of all obligations as between communities under separate governments has seldom, if ever, been consistently carried out. Even savages recognize the obligations of good faith, and the wickedness of breaking a covenant when once made. On the other hand, the right of the stronger to impose what terms he pleases, and if necessary to push his demands to the point of the utter annihilation of his enemy as an independent power, has been almost as generally admitted. Yet in its denial of international justice the world has always been singularly halting. The fable of the wolf and the lamb has always applied to the dealings of strong and weak peoples, and men are never content to destroy their enemies without first proving them to be wholly in the wrong and utterly unworthy to live. In our own day the confusion of ideas has reached its height, and results in changes of attitude which succeed one another with bewildering rapidity, men who at one moment deny all pleas for international justice as silly sentimentality firing up immediately afterwards when they are accused of applying their own principles with perfect consistency, and denying as a disgraceful slander the charge that they have followed practices which they have always declared to be justifiable. From these symptoms we may conclude that

---

it as formally inaccurate, but Professor Oppenheim points out that the difference is rather one of terms than of substance. Rousseau's dictum may be said to express the ethical, if not the legal, conception of modern war.

[1] See *Hague Convention of 1899*, iv., art. 1. This was unaltered in 1907. Art. 2, which accords belligerent rights to the population of an invaded territory which spontaneously takes up arms without having had time to organize itself, was modified in 1907 by the condition, "if they carry arms openly." The limitation is a serious one, for in practice the accusation against the people of an occupied territory is constantly that they attack by stealth.

the human conscience is uneasy when it is finding formulæ to sanction wrong-doing in international affairs, and that in the back of their minds people recognize that justice is justice even though there be no power to enforce it.

In the mediæval world such a power was, in fact, found in the spiritual supremacy of the Pope, which accustomed men to the reconciliation of national independence with a spiritual authority to whom all alike could appeal. When the Reformation broke up this unity and the discovery of America raised new problems of international right and wrong, the modern idea of an international code soon emerges. The early writers, like Franciscus à Victoria, who boldly challenged the whole position of the Spanish in the Indies, were too far ahead of their generation, and passed away without sensibly influencing it. The work of Grotius, as we have seen, had a more enduring influence, and that not only on the usages of war, but on the whole conception of nations as being at once politically independent and yet morally subject to the law of Nature. A more revolutionary principle was introduced, or rather was brought into prominence, by the Society of Friends, who denounced all warfare as contrary to the teaching of Christ, and sought to recall men to the principle of non-resistance. The influence of the Society on the modern world is not to be measured by the number of converts to its principles. It is a protest which has set the military spirit the task of justifying itself. Such justification may be founded in theory on the necessities of self-defence. But if self-defence is a fully sufficient justification when the genuine motive of resistance, the study of history compels us to recognize that it is too often a mere cloak for aggression. Nor if people are in earnest in the desire to restrict war to the occasions on which a nation can maintain its plain rights by no other means, will they question that war is a radically rude and barbarous method of attaining that end, justifiable at best only until means of obtaining justice in international affairs are devised by the common-sense of civilized humanity. The repeated settlement of difficulties—sometimes of a most anxious and iritating nature—by arbitration in recent years, the instances of general agreements settling outstanding controversies and providing for arbitration on future matters of disagreement, and, finally, the provision of a standing machinery for such occasions, all point to a partial replacement of war by arbitration, and there seems every reason to hope that within a generation the employment of judicial arbitrament will be as common among the European states as it was in the fifth century B.C. between the states of Greece.

The doctrine of natural liberty, particularly as preached by Cobden and the Free Traders, also told heavily on the side of peace, just as the recrudescence of militarism in our own day has been associated, not in this country alone, with economic Protection. But the Cobdenite doctrine was negative, and might even, if rigidly applied in cases like that of the Armenians, be made a justification for a cynical policy of national isolation. More elastic and more human was the Gladstonian creed, which, following in the tradition of Fox, and equally of Canning, utterly broke with the doctrine of state morality and rested international dealings on the simple ground of right and wrong as applicable to all other human relations. This is the Grotian principle, but more thoroughly carried out. For Grotius, holding that states were bound by the Law of Nature, conceived their conduct as restricted only in those directions—and they were not so many—with which the Law of Nature dealt. The fuller view allows of no fundamental difference between one branch of morality and another. One is as "natural" as the other, and so the conception that we form of the honour, the true interest, the advancement of our country is to be measured by the same standards as we apply in judging of what redounds to the honour, the true interest, the advancement of our dearest friends. At this point we reach the result to which Mazzini was led by one road and Comte by another, of each nation as a member of the family of nations which constitute humanity, as possessing duties as well as rights in virtue of its position, and as deriving a higher honour and more lasting glory from its services to the greater whole of which it is a part than from any exhibition of superior strength shown in rivalry with its fellow-members. Just as international law rests in its beginnings on the conception of humanity as incarnate in the person of every human being, so in the consummated conception of right and brotherhood between nations, it touches the other pole of modern ethics—the conception of humanity as a whole, the sum of all human beings and their collective history. In this conception the old group-morality disappears. The special relations of citizenship impose special obligations, but they are no longer incompatible with the wider obligations to humanity at large, but supplement them. The Englishman owes a duty to England—the mother of freedom, the land of his fathers, the state which protects him, the nation which stimulates and guides him with a glorious tradition, which it is his most splendid ambition to carry further on its true line of growth. He does not owe the same duties to France or Germany, but he owes them recognition as members of the family of nations, and there are times when he can best serve England by reminding her of what is due to them. The true patriotism is the corner-stone of true internationalism.

In all this it is true that we are describing the ideals of thinkers and statesmen rather than the practice of nations. Still, that such ideals should have come into touch with practical statesmanship, as in the course of the nineteenth century they undoubtedly did, is itself a fact of the highest importance for ethical history. And notwithstanding a certain counter movement in more recent thought, the actual realization of internationalism contrives, on the whole, to move forward. The development may be compared to the rise of justice within society. The civilized world has passed through the age of the blood feud in which any quarrel gave rise to a war of extermination. Custom has long since restricted the quarrel, excluded non-combatants from the ring, and prohibited the general massacre or enslavement of the kinsfolk. But, as in many primitive societies, there is no physical force behind these customs, there is nothing but the pressure of opinion and the ethical and religious ideas shared by the nations concerned in common with their neighbours. The next stage is to institute a court for the settlement of disputes. Such a court generally has no powers in early society except the moral power of an appeal to opinion, and precisely this is the position of the Hague tribunal. It is not difficult to imagine a time when the decisions of that tribunal shall have gained such authority that to dispute them will be held at once an outrage on justice and a menace to the world's peace—such a menace as would provoke a combination of powers to coerce the recalcitrant party. At that point the world's tribunal will have gained the executive authority needed to transform it into a fully-developed court of justice.[1]

---

[1] The above section was written in days of peace. How far and in what direction it should be altered in the light of subsequent events, are questions to which it is premature to attempt an answer. The passage has, therefore, been left as it stood.

CHAPTER VII

CLASS RELATIONS

1. We have seen that morality at its outset is bound up with the structure of the social group. Between members of any one community the obligations recognized may be many and stringent, while in relation to outsiders no obligations are recognized at all. The typical primitive community is, as it were, a little island of friends amid a sea of strangers and enemies. The consequences of the group principle we have traced in the history of warfare. We have seen it applied in its extreme form in the treatment of conquered enemies as men destitute of any title to consideration; we have seen that as moral development proceeds, it is moderated and softened, but that, except in the highest ethical thought, it does not wholly disappear. Throughout history we have the standing contrast of the comparative peace, order and co-operation within each organized society, and the disunion constantly tending to hostility found in the relations of different societies to one another. We have now to trace the operation of the same principle upon the structure of society itself.

The primitive community is, as a rule, small, but compact and homogeneous. There is always the distinction between its own members and outsiders; there is also a greater or less distinction in the rights enjoyed by the two sexes. In other respects the obligations constituting its ethical life are fairly uniform. But as society grows and its industrial life develops, as primitive barbarism gives way to some degree of culture, this simplicity of the early social organization breaks up, and now the group principle obtains a fresh development. Distinct groups arise within each society, within the limits of a single community, under one king or one governing body. Besides the group of free men—to use that term provisionally—who constitute the members of the community in the fullest sense of the word, there arise inferior classes, slaves or serfs or low-caste men who are in the community and yet not of it, who are subject to its laws and customs, but not possessed of all the civil rights which membership confers. These inferior groups within the community occupy a position which is morally and legally analogous to that of strangers and enemies. In extreme cases they are wholly devoid of rights, in other cases their inferiority is marked by a more or less serious lack of the civil rights enjoyed by their superiors. Historically, in the case of slaves, their position is, in point of fact, very largely that of incorporated enemies, and whether this corresponds to the historical fact or not, ethically speaking, the denial of personal rights from which they suffer is a consequence of that same group-morality which from the first contrasts friend and neighbour with stranger and enemy, and denies to the one the elementary rights of a human being, which are readily accorded to the other.

Not merely political privileges, but civil rights, the right of holding property, the right of personal freedom, the right of marriage, even the right of protection of life or limb, are wholly or in part denied to classes excluded from full membership of the community. Such distinctions of personal status are found in one form or another in the great mass of societies, civilized or uncivilized, which stand above the lowest stages of culture. They persist well into the modern period, and are but slowly modified, and partially abrogated in proportion as the whole principle of group-morality yields to ethical criticism. Of these distinctions the commonest is, of course, the distinction between slave and free, but slavery is in many cases replaced by serfdom and in others by caste. What is common to all three institutions is the derogation from full rights which they imply. In detail they are distinct, though the line of demarcation is not always easy to draw. We may say that the slave, properly regarded, is a man whom law and custom regard as the property of another. In extreme cases he is wholly without rights, a pure chattel; in other cases he may be protected in certain respects, but so may an ox or an ass. As long as he is for all ordinary purposes completely at his master's disposal, rendering to his master the fruits of his work, performing his work under orders, rewarded at his master's discretion, and liable to punishment on his master's judgment, he may, though protected in other relations, fairly be called a slave. If, on the other hand, he has by his position certain countervailing rights, *e. g.* to inherited property from which he cannot (except for some default) be dislodged, he becomes, though still liable to labour under his master's direction, still subject, perhaps, to punishment and still in an inferior legal position, no longer a slave, but a serf. Serf and slave alike belong to some definite master, public or private. A servile caste, on the other hand, is not necessarily in the ownership of man or body of men. It is distinguished by a greater or less lack of personal rights, by social inferiority, and probably by a taboo cutting it off from intercourse with others. And as there may be servile castes falling below the normal level of free men, so there may be privileged castes of nobles possessing, as it were, an excess of rights, and these privileges may indirectly depress the position of the ordinary member of society and impair his freedom by withholding protection from him in relation to one of the nobility. Finally, the whole community may suffer a similar depression in relation to the king, who, in the extreme development of the despotic principle, becomes, as we have seen, eminent owner of all property and lord of the persons of his subjects. In such cases, though there may still be distinct grades in society, yet all subjects alike are in principle destitute of rights.

Now all these methods of the gradation of rights, if the phrase be allowed, rest ultimately on the principle of group-morality—the principle that rights and duties do not attach to the human being as such, but are determined by extraneous considerations, social, political, or religious. The development which this principle attains varies very greatly in different societies, and depends upon economic and social, as well as on ethical and religious conditions; but its operation, in one form or another, persists throughout history, and is one of the dominant facts, if not *the* dominant fact, ethically considered, in the evolution of human society. In tracing its varied development, we shall for the most part follow the history of slavery and serfdom as the main line along which it runs. We shall, however, deal with other forms which the principle assumes, as occasion requires.

2. In the primitive group, as has been said, we find, as a rule, no distinction of slave and free, no serfdom, no caste, and little, if any, distinction between chief and follower. Taking this statement alone, one might infer that the primitive savage realizes the ideal of the philosopher of a community of free men and equals; but the savage enjoys freedom and equality, not because he has realized the value of those conceptions, but because neither he nor his fellow is strong enough to put himself above his neighbour. Two conditions suffice to ensure the growth of slavery or of a servile caste in the savage world. The first condition is a certain development of industrialism. In a hunter tribe, which lives from hand to mouth, there is little occasion for the services of a slave. The harder and less interesting work can be put upon the women, and the chief occupation of the men is to fight. This brings us at once to the second

condition, which is a measure of warlike prowess, giving to a tribe the means of supplying slaves from its captives. But not only must a tribe that is to obtain captive slaves, conquer; it must also refrain from putting its captives to death, and we have already seen how the difficulty of exercising such restraint militates against the rise of slavery in savage society, and how, in consequence, though the idea of slavery is widely diffused in the uncivilized world, the institution grows more important step by step with the development of civilization. We find many civilized peoples, where slavery has attained a luxuriant growth, retaining a tradition of a time at which there were no slaves, and these traditions may well preserve an historical truth. But the enslavement of the vanquished is not the only alternative open to a conquering people. Instead of apportioning the captives to individuals as their booty, they may reduce the conquered tribe collectively to a servile position. In that case we get from the first a system of public serfdom. In other cases, again, possibly as a development of this practice, the distinction of conqueror and conquered hardens into a distinction of caste sanctioned by religion. Finally, the development of military organization, and the consequent rise of the power of the chief, are responsible for that form of "rightlessness" in which all members of the tribe become slaves of the king.[1]

In one or other of these different forms we find the conception of a class of men, wholly or partly destitute of rights, widely diffused throughout the uncivilized world. The special home of slavery is, of course, Negro Africa, where the exceptions in which the institution is not found are quite inconsiderable.[2] In

---

[1] Post (*Afrik. Jurisp.*, vol. i. p. 115 seq.) gives a number of African peoples in which the king has absolute powers of life and death over his people, and a number in which all subjects are regarded as his slaves. Among the Kaffirs the king could take any man's cattle to replace his own.

[2] According to Waitz (vol. ii. p. 398), slavery was for the most part unknown among Kaffirs, and the case of a sale of children recorded by Moffat is regarded as exceptional. A less favourable view of Kaffir warfare is taken by Letourneau (*Esclavage*, p. 53), who says that they took girl prisoners as concubines and youths as slaves, though their manners were too savage for regular slavery. Letourneau also draws attention (pp. 54, 55) to a servile class, called balala, among the Bechuanas, who had no possessions, had to perform manual labour in return for food, might be slain for disobedience, and supplied victims for human sacrifice upon occasion. We have here something more nearly approaching a caste distinction than ordinary slavery.

The Hottentots, according to Letourneau (*ib.*, pp. 49–51), gave no quarter and held no slaves, but, according to authorities cited by Kohler (*Z. f. V. R.*, 1902, p. 340), slavery, though it has now disappeared, existed formerly, and the slaves were at the masters' mercy and often ill-treated, Oceania there is more variety. In some of the islands, as has been seen, war is but little known, and in these cases slavery is also absent;[1] but there are other causes militating against its development. In Melanesia cannibalism is frequent, and in some cases, for example in Fiji, slaves are kept for cannibal purposes.[2] In Micronesia, again, a strongly-marked caste division partially replaces slavery, though there may be slaves in the proper sense in addition to the servile caste. Throughout Polynesia caste is more prominent than slavery.[3] It is a Polynesian saying, that "a chief cannot steal," and in Tahiti, if a chief asks, "Whose is that tree, etc.," the owner answers, "Yours and mine." The killing of one of the lower by a member of the higher class is regarded as merely a peccadillo.[4] In Micronesia the original principle of the constitution seems to have been a division into two castes, the one god-like, immortal, and possessing all the power; the other having no souls, no property, no wives, and doing all the hard labour; but below these again were the enslaved prisoners.[5] In the Malay region slavery is widely diffused, especially in the towns,[6] though, as we shall see later, its forms differ, and in some cases, particularly under Mohammedan influence, the slave is by no means rightless. Among the rude Indian hill tribes the institution is naturally less developed. In some cases, as among the Bodos and Dhimals, there are apparently no slaves, and the same is said to be true of some of the Naga tribes. Other Nagas, however, make slaves of captives,[7] and among many other hill tribes slaves are held.[8]

---

[1] For example, in the little island of Rotuna slavery proper did not exist and casual strangers were usually married and adopted into a clan. Some Fijians and Melanesians, however, have been treated as inferiors, not being adopted (J. S. Gardiner, in *J. A. I.*, xxvii. 486). In parts of New Guinea there is no slavery (Letourneau, p. 39); it is the exception among the Papuas (*ib.*, p. 35, and Kohler, *Z. f. V. R.*, 1900, p. 364).

[2] Letourneau, *op. cit.*, p. 41. Broadly, Letourneau concludes Melanesian slavery originated for the sake of cannibalism.

[3] Thus in the Marquesas Islands there were no slaves, but a despised lower class who furnished victims for human sacrifice (Letourneau, p. 183).

[4] *ib.*, 188.

[5] Waitz, v. ii. 125. In the Carolinas not only was intermarriage forbidden, but the lower caste had to avoid contact with the higher on pain of death. Fishery and sea-faring were forbidden occupations to the lower caste.

[6] See Waitz, *Anthropologie*, v. i. 154 seq.; Ratzel, *History of Mankind*, i. 446.

[7] Slavery is said to be universal among the Aos (Godden, *J. A. I.*, xxvi. 184), but the Luhupas and one or two other tribes are said to have no slaves and to be opposed to the institution. All the Nagas are head-hunters (Godden, *J. A. I.*, xxvii. 12).

[8] *e. g.* Kukis, Garos, Gonds and Khonds, who use slaves for sacrifices. The Lakka Kols have serfs instead of slaves (Letourneau, pp. 305–306).

The nomad tribes of Central Asia do not generally spare their captives, and still practise human sacrifice, but the richer tribes are slave-holders.[1] Among the North American Indians slavery is but little developed east of the Rockies, though there were a few tribes which occasionally practised [2] it as an alternative to the torture or adoption of prisoners. In the west and north, however, it was widely diffused,[3] though here also, in some cases, the indiscriminate massacre of prisoners was the common alternative. In some tribes of tropical South America war captives are enslaved, but prisoners may also be put to death or adopted as members of the tribe.[4] The dependence of slavery on the economic factor is shown by its regular increase at each economic grade. The following table [5] shows the number of peoples who hold slaves either in permanence or as objects of a regular traffic; the second column reduces this number to a fraction of all the cases in each grade where information was obtained about war and warlike matters, this being the department of ethnography in which we are most likely to meet with statements as to slavery if it exists.

	Numbers of Slave-holding Peoples.	*Fraction of the Total Number of Peoples.*
Lower Hunters	1	·02
Higher Hunters	26	·325
Agriculture I	14½	·33
Pastoral I	5½	·37
Agriculture II	59½	·46
Pastoral II	12	·71
Agriculture III	77	·78

---

[1] Ratzel, vol. iii. p. 346. According to Letourneau (p. 223), a form of serf cultivation is more strongly developed than personal slavery.

[2] *e. g.* according to Waitz (vol. iii. p. 158), the tribes of North Carolina, the Navajos, Iroquois and Hurons.

[3] Thus, among the Oregons, prisoners were enslaved "from time immemorial" and sometimes sacrificed at the death of a master (Alvord, in Schoolcraft, v. 654). Slavery is said to have extended over the whole north-west coast (Waitz, vol. iii. p. 329). At Nootka Sound prisoners when spared were enslaved. The Chinooks made slave *razzias* and held the slave as a chattel and object of trade (*ib.*, pp. 334, 338). The Apaches killed the male captives, but sometimes held the women as slaves (Reclus, p. 128).

[4] Schmidt, *Z. f. V. R.*, 1898, p. 294. According to Letourneau (p. 123) the nomads of the Pampas rarely give quarter to males, but sometimes take women as slave concubines and bring up children to be adopted into the conquering tribe.

[5] From the *Simpler Peoples*, pp. 235–236.

The proportions show an increase at each grade[1] which, rough as the classification necessarily is, and imperfect as our information must be, can hardly be altogether accidental. It is of interest to set side by side with these figures the corresponding table for "nobility," by which we mean an upper rank, other than the ruling chief with his immediate family, distinguished by privileges, greater or less, from the mass of the people.

NOBLES

	Cases	*Fractions.*
Lower Hunters	0	0
Higher Hunters	9	·11
Agriculture I	1½	·03
Pastoral I	3	·20
Agriculture II	19	·15
Pastoral II	4	·24
Agriculture III	23	·23

The proportions are much smaller, but the tendency is in the same direction.[2] The same advance in social and industrial organization which tends to the formation of a servile class below the ordinary free man works, though less surely and rapidly, to the elevation of a small class above him.

Thus we may fairly say (1) that in the rudest tribes there are no class distinctions, the harder and more menial work falling often (though not always) upon the women; (2) as a tribe grows in culture, and especially in military strength, the first result is, as a rule, that the conquered enemies are sacrificed, eaten, tortured, or in any case put to death. But (3) with a certain softening of manners, or at any rate with a cooler perception of permanent advantage, prisoners are spared and enslaved. This grace is first reserved for women and children, but is afterwards extended to male captives. A class is thus formed who are within the jurisdiction of the conquering tribe, but from the point of view of law and morals remain outside it. Either in the form of a class of slaves or of a degraded quasi-servile lower caste, the presence of such an element in the population is a general feature in societies which have emerged from the lower savagery and the rawest militarism. On the strict principle of group-morality this class is destitute of rights, and only too often the principle is consistently carried out. The typical slave can neither marry nor hold property except on sufferance. His very life is in his master's hands. He may be flogged, maimed, sold, pawned, given away, exchanged, or put to death.

---

[1] The results do not differ markedly from Dr. Nieboer's, whose work should be consulted on the point, though we include (1) cases where women and children only are held as slaves, and (2) cases in which slaves are taken to sell again, both of which he excludes.

[2] It should be said that of the nine cases among the Higher Hunters eight are from the Fisher peoples of the Pacific Coast, who also supply the great majority of the cases of slavery in this grade.

3. In many slave systems, however, this "rightlessness" is qualified in various ways. How this qualification arises we shall best understand if we take a more complete view of the actual sources from which slaves are recruited. Hitherto we have spoken only of captives in war. But this, though probably the original method by which a servile class is formed, is not the only method by which it is recruited. Of other methods the first and greatest is inheritance—for normally a slave's child is also a slave. Secondly, in most barbaric and semi-civilized societies the numbers of the slave class are swollen by other causes, principally by debt, crime, and the slave trade. In some cases slavery is the prescribed penalty for crime. More often the man who cannot pay the prescribed composition either falls into slavery himself as a debt-slave in order, as it were, to work out his debt, or sells, particularly under the sway of the fully developed *patria potestas*, his wife or child for that purpose. "What! shall I starve as long as my sister has children whom she can sell?" was the remark of an African negro to Burton—a remark which comprises a whole chapter upon primitive ethics in a few words.

The formation of debtor-slaves, and even the increase of hereditary slaves, has, however, a certain softening influence upon the institution of slavery itself, for while the captive slave remains an enemy in the sight of law and morals and is therefore rightless, the debtor or the criminal was originally a member of the community, and in relation to him there is apt to arise some limitation of the power of the master. The family of the debtor-slave will not see him treated with unlimited cruelty; they retain some right of protection, however illogically, just as they retain protection over the purchased wife, however illogically. In fact, the slave is no longer a mere stranger or enemy. He is partially incorporated in the community and has some recognized rights, though by no means those of a free man. The improvement tends to extend itself to the hereditary slave who also was born in the community, though within the slave class. Thus there comes to be a distinction between the domestic slave and the slave who is captured or bought from abroad. The one remains a chattel-slave, the other is becoming a serf. There are thus many gradations of "rightlessness" in the servile status, and these must very briefly be passed in review.

Customs protecting the slave from undue tyranny are found in the barbaric and semi-civilized world, though in many cases they are not derived from barbaric ideas, but are traceable to the influence of Mohammedanism. In these customs the distinction between the domestic and the foreign slave is generally well marked. Illustrations of almost every degree in "rightlessness" may be drawn from African slavery. Thus, among the Foulah, house slaves are treated as members of the family, and are sold only in necessity or for a punishment, while war captives and purchased foreign slaves are wholly without rights. In Bambara captives are pure chattels, but house slaves have a good position and in some cases are treated as members of the family. Among the Timmanees, the Bulloms, and the Beni-amer, no one is sold as a slave who was not bought as such. Among the Mandingoes native slaves are protected, while others are at the mercy of the master to sell or kill. On the Congo the captive slave may be sold, but house slaves only after a palaver—that is, with the consent of the community. Among the Barea and Kunama the master has no right of life and death over native slaves. At Timbuctoo no native can be enslaved at all. Among the West Equatorial tribes the slave may be killed by his master, but not sold abroad except for some transgression. At Nuffi a master may strike, but not mutilate or kill his slave. In Sokoto and among the Yolofs the captive slave may be sold at will, the born slave only after repeated chastisement. In Bihé pawn-slaves are protected, while bought ones can be arbitrarily punished, and only in the case of their death is a small fine due from the owner to the king. Among the Mpongwe the house slave can only be sold for some offence, and here slaves call their master "father" and are well treated. The Fantis recognize the distinction between the slaves of their own tribe and those of other tribes, and among the Ibu, on the Niger, slaves can hold property, build houses and marry.[1] They then rank as free, owing only a yearly tax, and the relation, in fact, passes into a kind of light serfdom. Similarly at Sokoto, the slave is at about the age of twenty given a wife and set up in a hut in the country. At Boussa they farm the land on the *métayer* principle, and though in law the masters could sell them and take their wives, children and goods, in practice they enjoy much liberty and property.[1] Various forms of serfdom, existing often side by side with slavery, are common in Africa, the serf cultivating the land and owing labour service or payment in kind, and sometimes holding property of his own.[2]

---

[1] See Post, *Afrik. Jurisprudenz*, i. 88, 92, 96; Waitz, ii. 213-214.

A right frequent in Mohammedan countries, found also in one or two instances of non-Mohammedan tribes, is that of changing the master. This a slave can effect by the legal process of *noxæ datio*, by which, on inflicting some injury on some man other than his own master, he, *ipso facto*, becomes that man's slave. Among the Barea and Kunama a native slave can simply leave for another village and so become free. In Zanzibar slaves obtain this right as the result of deliberate ill-treatment, and the same custom is found on the Congo, among the Apingi, and other West Equatorial tribes. In Ashanti slaves can commend themselves to a new master by giving him the right of life and death over them, and in Timbuctoo, if ill-treated, a slave may appeal to the court in order to be sold. Among the Beni-amer the distinction between the born slave and the foreign slave is well marked in the case of homicide. For the bought slave only the "wer" can be demanded, but the born slave can be avenged by blood. The marriage of slaves depends generally upon the will of the master. In relation to property their rights vary greatly, and here again the distinction of origin of slaves makes itself felt, *e. g.* among the Bogos and Maréa a slave who is the son of a free-born man has the right to buy his freedom, a right which is denied to the slave by birth.[3]

Of the various tribes mentioned, those in which protection is carried furthest are for the most part either partially Mohammedanized or partially Christianized,[4] and while some distinction between domestic and foreign slaves may be attributed to Negroland generally, such further amelioration of the slave's position as is to be found in barbarous or semi-civilized Africa is probably to be attributed to the higher ethics of a civilized religion.[5] The same influence is found at work among the Malays, where the distinction of native and foreign slaves also re-appears. Speaking generally, the captive slaves are destitute of rights, and the capture and sale of slaves is a chief line of business among all Malays who trade in ships of their own. But crime and debt are also rich sources of slavery,[1] and in some parts at least the slave has a measure of protection. In the Malacca Peninsula, where the influence of Islam is strong, the slave, if struck, may bring his master into court, and the slave woman who bears a child to her master goes free.[2] The Battaks also, head-hunters though they are, put a limit on the master's right of punishment.[3]

---

[1] Letourneau, p. 103. Yet at Sokoto captive slaves, besides being frequently sold, are treated as beasts of burden and chained for trivial offences (Post, *A. J.*, i. 96; Letourneau, *L'Esclavage*, p. 102).

[2] For instances, see Post, *Afrik. Jurisp.*, pp. 98, 101, 106. In case of failure to make due payments the serf is often reduced to the position of a slave, *e. g.* among the Takue, Marea, and Bogos. Among the Beni-amer the penalty of failure is death (Post, *A. J.*, i. 101).

[3] Instances are found at Khartoum, among the Usagara, the Futatoro, and among the Kimbunda (Post, *A. J.*, 103, 105, 112).

[4] Letourneau, 88.

[5] Letourneau, p. 72 seq.

Thus in the barbaric world we already find degrees of rightlessness, and a measure of legal or customary protection, at least for certain classes of slaves. This alleviation is often, but not always,[4] traceable to the influence of one of the higher religions. The free man who has become a slave is not wholly cut off from membership of the community, but retains certain recognized rights, though by no means those which full membership confers. We have now to see how the idea of slavery, and of rightlessness generally, fare in the main forms of civilization.

4. In the early Babylonian Empire slavery was fully developed as an institution, though slaves were not so numerous as they afterwards became. The slave is spoken of in the contracts [5] not as a man, but as a chattel. Slaves are reckoned in a transfer as so many pieces of goods. They were distinguished by a brand, and, if they were runaways, often wore fetters.[6] They are recruited by capture, by debt, and by the sale of wives or children by husbands or fathers. They pass on a man's death to his heirs, and can be pawned, given away or sold. With the exception of debt-slaves, the Code of Hammurabi makes no

---

[1] Waitz, v. i. 143, 153.

[2] *ib.*, 153–155.

[3] According to Letourneau (p. 200), the master may punish, but not put the slaves to death. According to Waitz (*op. cit.*, p. 188), punishment must be inflicted by a magistrate. The slave becomes a concubine by prolonged cohabitation, and sometimes a legitimate wife (Letourneau, *loc. cit.*). Among the more savage Battaks slaves are used for human sacrifices (Letourneau, p. 203).

[4] Apart from some of the instances already given, in ancient Mexico, where captive slaves were taken principally for food, domestic slaves were protected. They might not be sold without their consent, nor chastised without previous warning. If ill-treated they might take refuge with the king, and to kill them was a capital offence. They could hold property and marry, and their children were free (Letourneau, pp. 157, 158; cf. also Payne, vol. ii. p. 485 note 3).

[5] The contracts yield no instance of more than four in a family, and great houses often have only one (Meissner, *Altbabylon. Privatrecht*, pp. 6–7).

[6] Meissner, *loc. cit.*

provision for their protection against their masters. The only case in which it prescribes any treatment is that of the repudiation of their master, in which the penalty assigned is the comparatively light one of losing an ear. In practice, however, it would seem that the punishments for running away were severe.[1] The provisions in the Code for cases of injury to a slave by some one other than his master are full of significance. The slave's life has its price, but clearly the price goes to the master, for in the passages which refer to the killing of a slave the law is that the offender shall render slave for slave. For example—

> "If a doctor has treated the severe wound of a slave of a plebeian with a bronze lancet and has caused his death, he shall render slave for slave.
>
> "If he has opened his abscess with a bronze lancet and has made him lose his eye, he shall pay money, half his price." [2]

Similarly, the defaulting builder who causes a free man's death is punished by the law of retaliation, but if it is a slave who dies "he shall give slave for slave." [3] This is pleasant for the master, but of no particular value to the slave, and so when sec. 199 says that if a man "has caused the loss of the eye of a gentleman's servant, or has shattered the limb of a gentleman's servant, he shall pay half his price," we may assume that it is the owner who benefits.[4] The loss of life or limb by a slave is loss to the master, and is made good by compensating him—so completely is the slave his chattel.[5] Debt-slaves, however, were, as has been noticed, in a more favourable position. Their bondage is limited to three years. If a man has a debt, says clause 117, "and he has given his wife, his son, his daughter, for the money, or has handed them over to work off the debt, for three years they shall work in the house of their buyer or exploiter, in the fourth year he shall fix their liberty." Further, the person seized by a creditor in distraint is protected by retaliation or price, according as he is a free man or slave.[6]

---

[1] Meissner, *loc. cit.*, and *De Servitude*, p. 2.

[2] Hammurabi, secs. 219, 220.

[3] *Op. cit.*, sec. 231.

[4] Compare the clauses dealing with miscarriage, 213, 214: "If he has struck a man's maidservant, and caused her to drop that which is in her womb, he shall pay two shekels of silver. If that maidservant has died, he shall pay one-third of a mina of silver."

[5] Notwithstanding the bad legal position of slaves, the code contemplates the marriage of slaves with free women, sec. 175.

[6] Sec. 116. The clause contemplates distraint upon the person only (Dareste, *Journal des Savants*, Oct. 1902, p. 526), and apparently the seizure of the son or slave of the actual debtor.

In practice, the position of the Babylonian slave was probably much more favourable than it appears in legal theory. In the records of the New Kingdom, slaves often appear as principals in business transactions. They carry on trades or businesses, such as banking, and have a *peculium* which is virtually assured to them, though in law it may be their master's, and for which they pay a yearly tribute to the owner. Out of this *peculium* some slaves, if not all, might buy back their liberty.[1] We find them entering into contracts with other slaves and even with free men, suing and sued at law, and in many ways acting as though free.[2] On the other hand, they might be branded. The rich Itti-Marduk-Balatu buys two slaves, one marked on the ears and the eyes and one who is simply described as branded, for three *minæ*.[3] This same great banker disposes of a slave girl to one purchaser after another for immoral purposes, and a contract selling a woman to a brothel-keeper is preserved.[4] The slave girl was entirely at the disposal of her master, and indeed, if he totally neglected her, it was held that she would in time become a malevolent being with demoniac powers, against whom magical conjurations were pronounced.[5] Slaves were freely pawned, given away and sold. Putting all the facts together, it would seem that there were different classes of slaves, distinguished in practice and by custom if not in law, and that, while some of them had practical enjoyment of various important rights, the conception of chattel slavery had by no means disappeared.

Our information as to ancient Egyptian slavery is not so precise as it is for Babylon, and when dealing with a history extending over, perhaps, four or five thousand years, it is easy to make statements which would be true of one period, but would not hold of others. Some broad features, however, appear tolerably constant. The main sources of recruitment of slaves in the full sense of the term were capture and the slave trade. The conquering Egyptians did not always kill all their male captives, but frequently took them alive, and throughout their history down to the New Kingdom frequently organized warlike expeditions or *razzias* for the purpose of slave-hunting.[6] Prisoners were taken for service on the public works,[1] or to the harems, and it appears from the Tell-el-Amarna letters that, in addition to thousands of female slave captives, there was a regular tribute of girls from various places.[2] On the public works, the pyramids, the great temples and palaces, the labour and lives of the captives were prodigally spent. Rameses IV., in one expedition for transporting great blocks of granite, employed 5000 common soldiers, 800 barbarian mercenaries, 2000 bond-servants of the temples and 200 officers. When foreign captives were not available the Pharaohs employed their subjects.[3]

---

[1] Oppert, *Condition des Esclaves à Babylone*, p. 4.

[2] Kohler and Peiser, *Aus dem babylonischen Rechtsleben*, hft. i. 1; ii. 6.

[3] Meissner, *De Servitute*, p. 20.

[4] Kohler and Peiser, *op. cit.*, iv. 28–29.

[5] Maspero, *Dawn of Civilization*, p. 735.

[6] See above, chap. vi. pp. 247–248, and frequent references in Breasted's *Ancient Records*.

An idea of the number of slaves in Egypt may be formed from the fact that in the cause of thirty years Rameses III. presented 113,433 to the temples alone.[4] These slaves were apparently entirely at the disposal of their master, who removed them from place to place, sold them, used them as he pleased, pursued them if they succeeded in escaping, and had the right of re-capturing them as soon as he received information of their whereabouts. They worked for him under their overseers' orders, receiving no regular wages, and with no hope of recovering their liberty.[5] The captives, however, apparently intermarried frequently with natives, and had families and descendants who, at the end of two or three generations, became assimilated with the indigenous races, and passed into the condition of serfdom. How far this serfdom extended, and what classes were free, it is difficult to say with precision.[6] Erman points out that in the early Empire, if we went only by the monuments and representations in the tombs, we might conclude that there was no intermediate class between the great men in the kingdom, the priests and officers, on the one hand, and the crowd of labourers and serfs on the other; but probably there must have been some middle class which helped to bring Egyptian art and handicraft to their pitch of perfection.[7] In the New Kingdom the peasant serfs were strictly part of the property of the crown, or the temple to which the land belonged. They were despised by the scribes, and their condition is the subject of many contemporary descriptions implying abject servility.

---

[1] Diodorus describes the suffering of captive slaves, including women and old men, in the Nubian gold mines. His description refers to the times of the Ptolemies, but there is no reason to suppose that things had got any worse under the rule of the Greeks (Erman, *Life in Ancient Egypt*, 463; Diodorus, iii. 11).

[2] Flinders Petrie, *History of Egypt*, vol. ii. p. 274.

[3] Erman, p. 476.

[4] Maspero, p. 326.

[5] Maspero, *loc. cit.* In a large measure the slave work was done in the regular workhouses, or *ergastula*. For the employment of bondwomen in these places, see W. Max Müller, *Liebespoesie*, p. 6.

[6] Inscriptions of the Old Kingdom bequeath or transfer the "people" on the land along with the small cattle (Breasted, i. 77, 91, etc.).

[7] Erman, pp. 100, 101. On the other hand, from the calculations of Breasted (iv. 98) it appears that not more than two per cent. of the population were temple property in the time of Rameses III.

The following verses refer to the slaves—

"The poor child is only brought up,
That he may be torn from his mother's arms;
As soon as he comes to man's estate,
His bones are beaten like those of a donkey;
He is driven, he has indeed no heart in his body."[1]

Even more graphic are the descriptions in the Sallier papyrus—

"The stone-cutter, who seeks his living by working in all kinds of durable stone, when at last he has earned something, and his two arms are worn out, he stops; but if at sunrise he remain sitting, his legs are tied to his back. . . . When the (mason's) work is quite finished, if he has bread, he returns home, and his children have been beaten unmercifully (during his absence). The weaver within doors is worse off there than a woman; squatting, his knees against his chest, he does not breathe. If during the day he slackens weaving, he is bound fast as the lotuses of the lake; and it is by giving bread to the doorkeeper that the latter permits him to see the light."[2]

As in other ancient civilization debt was probably one source of slavery. At any rate, under the New Kingdom we have contracts of slavery in which a man or woman acknowledges him- or herself as the slave of another. All his or her property belonged to the master, and the status might be hereditary,[3] but to judge from the wording, which is nearly the same as that of adoption, this form of servitude was easy. Documents relating to the sale of slaves from the same period are quite different in tone. We may suppose that in accepting servitude a man might retain certain rights which would not belong to a captive or hereditary slave.[4]

More than this, it would seem that even the free man, who was unrestricted in his power to move about and dispose of himself and his labour, was insecure unless he had his master, who would afford to him protection. Egyptian society, in fact, was organized upon a feudal basis.

---

[1] Erman, p. 128.

[2] Maspero, p. 312.

[3] I am thy slave for ever. Nevermore shall I be able to act as nembe (perhaps debtor, or tenant) to thee . . . together with my children that are born and those who shall be born to us, and all that belongeth to us (Griffith, *Rylands Papyri*, iii. 52, cf. 56).

[4] Griffith, iii. 58, 59.

"From the top to the bottom of the social scale every free man acknowledged a master, who secured to him justice and protection in exchange for his obedience and fealty. The moment an Egyptian tried to withdraw himself from this subjection, the peace of his life was at an end; he became a man without a master, and . . . without a recognized protector. . . . Any one might stop him on the way, steal his cattle, merchandise and property on the most trivial pretext, and if he attempted to protest, might beat him with almost certain impunity."[1]

Further, it is only in a qualified sense that freedom can be spoken of at all in relation to a country governed as Egypt was. As against the king or a great feudal lord, the Egyptian peasant often, if nominally free and possessed of his own plot of land, was without defence and without recognized rights. The tax-gatherer was in ancient Egypt what he remained to the Modern Period. Here is the description of him true to the life in the Sallier papyrus.[2]

"The scribe steps out of the boat at the landing-place to levy the tithe, and there come the keepers of the doors of the granary with cudgels and the negroes with ribs of palm-leaves, who come crying: 'Come now, corn!' There is none, and they throw the cultivator full length upon the ground; bound, dragged to the canal, they fling him in head first; his wife is bound with him, his children are put in chains; the neighbours, in the meantime, leave him, and fly to save their grain."

The system of forced labour was no less oppressive to the peasantry than that of the collection of taxes. The slaves were insufficient to cultivate the royal and seignorial lands, and the balance of the work fell upon the neighbouring peasantry, none being exempt except the destitute, soldiers on service, with their families, certain public employés and servitors of the temple. The work was hard, and enforced by the stick, and not only did it recur at regular periods, but in addition there were irregular corvées whenever it suited the king or lord to demand them.[3]

[1] *ib.*, 309. [2] *ib.*, 331.

[3] *ib.*, 333, etc. Most of our information refers to the Ptolemaic period, but the practice was undoubtedly more ancient, being referred to in inscriptions of the Middle Empire. "The entire Oryx nome laboured for me," says Ameni (12th Dynasty—Breasted, i. 252). "The rod is in my hand; be not idle," says the taskmaster to the builders under the 18th Dynasty (Breasted, ii. 293).

The slave, properly so called, was not indeed wholly, or, at any rate, not at all times, destitute of rights. According to Diodorus his murder was punished with death, the object of the law being, in the view of the Greek historian, to keep people from bad actions not through differences of fortune, but rather from the nature of the actions themselves, and at the same time to accustom a man by care for slaves to avoid far more all offences against free men.[1] This is a thoroughly Greek interpretation of the facts. It would probably be truer to say that in a despotic land like Egypt the distinction between free man and slave before the law was of less account than in a civic state. The king was by Egyptian principle master of the whole land of Egypt, owner of all property and lord of all men who dwelt therein. The Egyptian recognized duties to dependents, as appears from pleadings in the *Book of the Dead*, in which the deceased denies that he has oppressed those under him.[2] But these are rather the duties of benevolent consideration than of legal right. Egypt is a typical Oriental monarchy, a country in which it may be rather said that all classes were rightless than that slaves were distinguished from free men by the lack of rights.

5. The history of slavery among the Hebrews is interesting, both for the strong distinction made between Jew and Gentile, and still more for the progress which we can trace in law and custom affecting the position of the slave. According to the later law all the Canaanites ought to have been utterly destroyed upon the conquest, but this represents an ideal of barbarity which there is no reason to think was ever realized, and the narrative itself admits as much, especially in the case of the Gibeonites, who became "hewers of wood and drawers of water."[3] Whether by capture or by purchase Gentiles clearly became slaves, and the law ended by regarding the Gentile as the only slave whom a Hebrew ought in strict propriety to hold. Further, though the stranger is constantly recommended to consideration and just treatment, laws for the protection of the slave

---

[1] Diodorus, i. 76–77.

[2] In another well-known pleading, the soul protests according to some translators that he has not caused harm to be done to the servant by his chief. This, if correct, is an interesting recognition of a social duty to the slave, but the translation is uncertain, and Mr. Griffith renders it: "I have not turned the servant against his master" (*World's Literature*, p. 5321).

[3] Further, Solomon levied tribute of bond service upon all the Canaanites left, but not upon the Israelites (1 Kings ix. 21).

apparently apply in the main to the Hebrew only. We pass now to the consideration of these laws.

In the earliest code,[1] the period of service for a male Hebrew is limited to six years. "In the seventh he shall go out free for nothing." But the case is contemplated that his master has given him a wife, and in that case she, with her children, would remain with her master, and he might therefore choose to abide also. If so, "then his master shall bring him unto God (that is, to the temple) and shall bring him to the door or unto the door-post, and his master shall bore his ear through with an awl; and he shall serve him for ever."[2] The Hebrew father might sell his children into slavery, and the daughter who had thus been sold was not released in the seventh year, as were the men-servants; but she might be redeemed, and if not suitably married to the son of her master, regain her freedom. As to general protection, "If a man smite his servant or his maid with a rod and he die under his hand, he shall surely be punished"—in what way is not stated. The protection given to the slave would be more valuable if it were not for the qualifying clauses which follow. "Notwithstanding, if he continue a day or two he shall not be punished; for he is his money."[3] This is chattel slavery partially ashamed of itself. The code further provides that either a male or female slave should obtain freedom for the loss of an eye or a tooth. As in the Code of Hammurabi,[4] the master takes the value of the servant when he is killed by another man's ox, the price being fixed at thirty shekels of silver. It is a noteworthy inconsistency that retaliation is to be exercised upon the ox in this instance—that is to say, it is to be stoned to death. But where the ox gores a free man or woman, retaliation can also be exercised upon the master (supposing he has been guilty of negligence) unless he can buy himself off. The distinction is significant of the true position of the slave as a chattel whose price must be made good, rather than as a human being for whom retaliation can be demanded.

The code of Deuteronomy does not make any fundamental change in the position of the slave, though here, as in other respects, it breathes a more humane spirit. In this code the Fourth Commandment reads differently, the remark being inserted, "that thy man-servant and thy maid-servant may rest as well as thou." The insertion of this considerate reason is thoroughly in keeping with the character of the prophetic code. The Hebrew slave is still to be released in the seventh year, and released with gifts. "When thou sendest him out free from thee thou shalt not let him go away empty. Thou shalt furnish him liberally out of thy flock," and so forth. "Thou shalt remember that thou wast a bondman in the land of Egypt and the Lord thy God redeemed thee."

---

[1] Exod. xx.–xxiii.

[2] Exod. xxi. 2–6.

[3] Exod. xxi. 20. Here the qualification "Hebrew" does not appear, but it is perhaps to be understood from its use earlier in the chapter.

[4] Hammurabi, sec. 252.

The provisions as to the marriage of the slave to a wife provided by his master disappear, and the Hebrew woman is to be free as well as the man. Nor is there here any reference to the sale of daughters. The man-stealer is (as in the earlier code) to be put to death, but apparently only when offending against an Israelite;[1] and by a not infrequent inconsistency the fugitive slave is not to be given up, but "shall dwell with thee, in the midst of thee, in the place which he shall choose within one of thy gates where it liketh him best. Thou shalt not oppress him."[2]

In the priestly code the most definite change is one which appears at first sight reactionary. The slave is now to be released, not in the seventh year, but in the year of Jubilee; yet, in other respects, the code is considerate to the Hebrew slave, and indeed denies that he ought to be a bondman at all. "If thy brother be waxen poor," the true duty of the more fortunate Hebrew is to uphold him. "As a stranger and a sojourner shall he live with thee," but if he "sell himself unto thee, thou shalt not take him to serve as a bond-servant. As a hired servant and as a sojourner he shall be with thee; he shall sojourn with thee until the year of jubile."[3]

It is the Gentile—and here is the true spirit of ancient slavery—it is the Gentile who is the appropriate bondman. "As for thy bondmen and bondmaids . . . of the nations that are round about you, of them shall ye buy bondmen and bondmaids. Moreover, of the children of the strangers that do sojourn among you, of them shall ye buy." "Over your brethren ye shall not rule with rigour."

Thus the Levitican code comes as near as possible to the abolition of Hebrew slavery. Nevertheless, it lengthens the term from seven years to fifty. The explanation of this change is probably to be found in a passage in Jeremiah,[4] from which it appears that the provision for releasing the slaves in the seventh year was practically, if not avowedly, a novelty in Josiah's time. It is, of course, treated by Jeremiah as having belonged to the original Covenant; but nevertheless it appears from his account that King Zedekiah proclaimed this liberty as a new thing, doubtless in accordance with the recently promulgated code of Deuteronomy; and that, while it was temporarily obeyed, a relapse very speedily followed for which punishment by pestilence and famine is proclaimed. It would seem, therefore, that the law of Jubilee, while probably of ancient date and a survival of communal tenure so far as regards land, is applied to slaves in the hope of rendering the benevolent intentions of Deuteronomy a practical reality.[1]

---

[1] Deut. xxiv. 7.

[2] Deut. xxiii. 15.

[3] Leviticus xxv. 35, 39, 40.

[4] Jeremiah xxxiv.

In any case, regarded as a whole, the development of Hebrew law and custom in relation to slavery is an interesting example, on the one hand, of the amelioration of the slave's position by a distinct touch of humanitarian sentiment; and, on the other hand, of the persistence, owing to the dominance of an exclusive national religion, of the deep distinction between the domestic slave and the foreign.

6. *India.*—In India, slavery was already known in the Vedic age. The institution persisted in the Brahmanic period, although its existence was denied by the Greek travellers of Alexander's time. Whether the Greeks only saw certain districts in which slaves were few or were misled by the absence of rural slavery is not certain, but the recognition of slavery as an institution in the Brahmanic law-books is perfectly clear. Manu distinguishes slaves of seven kinds—

> "There are slaves of seven kinds, (viz.) he who is made a captive under a standard, he who serves for his daily food, he who is born in the house, he who is bought and he who is given, he who is inherited from ancestors, and he who is enslaved by way of punishment."

He proceeds to declare that, like the wife and the son, the slave has no property. The wealth which he earns is acquired for him to whom he belongs.

---

[1] The picture of Hebrew slavery would not be complete without a reference to the attitude of the wise man in Ecclesiasticus. He bids his reader treat a good servant well, and not defraud him of release. This, of course, with an eye on the year of Jubilee (chap. vii. 21). Indeed, he would have him treated as a brother: "For thou hast need of him as of thine own soul." And a more practical reminder follows, which may serve to help us, too, to understand a factor which must always have tended to mitigate the slave's lot: "If thou treat him evil and he run away from thee, which way wilt thou go to seek him?" On the other hand, you should be severe with a bad servant, and if he be not obedient, put on him heavy fetters. Making a bad servant's side bleed is one of the list of things of which a man ought not to be ashamed (chap. xlii. 5).

"A Brahmana may confidently seize the good of (his) Sudra (slave); for, as that (slave) can have no property, his master may take his possessions."

Quarrels with slaves are to be avoided. They should be treated, Manu says, "as one's shadow." If offended by them one should "bear it without resentment."[1] Much more moderate rules for their punishment are laid down than by the Hebrew lawgiver.[2]

But slavery is of very secondary importance in Hindu society as compared with caste. It would be out of place here to attempt a full discussion of the origin and nature of caste in India. We have seen the more elementary forms of the institution in other races. In India it reached an altogether abnormal development, which is of more interest for the student of Hindu society than for the general history of ethics. Caste did not exist in the primitive society of Vedic times, though conditions out of which it in all probability arose were already present. The Aryans found themselves a conquering white minority among the subject dark-skinned population, and the contrast between the Aryan and the Dasyu is already deeply marked. "Varna," the Sanskrit word for caste, means originally colour, and some at least of the Sanskrit authorities adopted the distinction of colour as their explanation of the origin of the institution.[3] In fact, towards the close of the Vedic age it would seem that the institution has taken shape. Four castes are mentioned in the Purusha-Sukta, one of the latest hymns found in the Vedic collection:[4] "When they formed Purusha, into how many parts did they divide him? What was his mouth? What were his arms? What were called his thighs and his feet?" The answer is that the Brahman issued from his mouth, the Kshatriya from his arms, the Vaisya from his thighs, and the Sudra from his feet. The first three, the priests, the warriors, and the farmers, were all Aryans and twice-born men. The Sudras alone were the once-born and the slaves of all the rest. These were the four original and legitimate castes. The mass of lower-caste men were held to have issued from various mixtures between the four original orders. Without attempting here to go into the Brahmanic theories of the origin and nature of caste in general, or dwelling on this occasion upon the position of the Brahman, it may suffice to quote a few laws from Manu illustrating the position of the Sudra, which tend to show the ethical analogy between a caste system and a slave system.

---

[1] Manu, viii. 415, 416, 417; iv. 185.

[2] See above, chap. v. p. 190; Manu, viii. 299–300.

[3] Muir, *Sanscrit Texts*, vol. i. p. 140.

[4] Muir, i. 156, 157.

The Sudra in Manu is as such a born slave.

> "A Sudra, though emancipated by his master, is not released from servitude; since that is innate in him, who can set him free from it?"[1]

If a Brahman requires any article for a sacrifice which he cannot find handy, "he may take at his pleasure two or three articles from the house of a Sudra, for a Sudra has no business with sacrifices."[2] To kill a Sudra is a minor offence, placed in the same list with the cutting down of green trees for firewood, neglecting to kindle the sacred fires, superintending mines, stealing grain, etc., and the penance for killing a Sudra is to give ten white cows and a bull to a Brahman.[3] On the other hand, an assault by a Sudra upon any twice-born man is punished by mutilation of the offending limb.[4] The defamation of a Brahman or an insult to a twice-born man by a Sudra is punished with equal severity: "He shall have his tongue cut out, for he is of low origin"; while, "if he arrogantly teaches Brahmanas their duty, the king shall cause hot oil to be poured into his mouth and into his ears."[5]

For a Sudra to have anything to do with a woman of the twice-born caste was a serious offence, but as to marriage with a Sudra woman, Manu's opinion fluctuates.[6] Lastly, the Sudras serve as scapegoats. "O Takman," says the Atharva Veda, addressing the demon who brings fever, "go to the Mujavant or further. Attack the Sudra woman, the teeming one, shake her, O Takman."[7] The relative values of the lives of men of the four castes are summed up. "One-fourth (of the penance) for the murder of a Brahmana is prescribed (as expiation) for (intentionally) killing a Kshatriya, one-eighth for killing a Vaisya; know that it is one-sixteenth for killing a virtuous Sudra."[8]

It ought only to be subjoined that the distinction of caste was a matter of some perplexity to moralists, even in the Brahmanic age. Among the different accounts of castes given in the Mahabharata some roundly assert that character makes caste.

---

[1] Manu, viii. 414. [2] Manu, xi. 13. [3] *ib.*, xi. 64, 65, 66, 67, 131.

[4] *ib.*, viii. 279, 280. [5] *ib.*, viii. 270, 272.

[6] In one place (iii. 17) the Brahman who takes a Sudra to wife will, after death, sink into hell; and other passages equally condemn any relations with Sudra women (*e. g.* iii. 191, 250). But in other places marriage with a Sudra is contemplated, and merely affects inheritance. In ix. 151, the son of the Sudra wife is to take one share of the estate as against three shares of the son of the Brahman; but in sec. 160, the son of a Sudra is not an heir at all. Commentators explain that this is the case in which the Sudra wife is not legally married.

[7] Duncker, *Hist. of Antiquity*, vol. iv. p. 281. [8] Manu, xi. 127.

> Nahusha, who had been condemned to take the form of a serpent, asks Yudhishthira the question: "Who is a Brahman, and what is the object of knowledge?" Yudhishthira replies: "The man in whom are seen truth, liberality, patience, virtue, innocence, devotion and compassion"—he is a Brahman according to the religious tradition. The serpent answers, "But in Sudras also we meet with truth, liberality, calmness, innocence, harmlessness and compassion, O Yudhishthira." Yudhishthira replies: "Whenever a Sudra has any virtuous characteristics, and a Brahman lacks it, that Sudra will not be really a Sudra, nor that Brahman a Brahman. The man in whom this virtuous character is seen is a Brahman, and the man in whom it is not seen is a Sudra." The serpent proceeds: "If you regard him only as a Brahman whom his conduct makes such, then caste is of no avail until deeds are superadded to it." Thus pressed, Yudhishthira admits the confusion of castes in the actual world, and concludes that good conduct and the fulfilment of the prescribed ceremonies are alike necessary.[1]

Other passages declared that fundamentally "there is no difference of castes. This world, having been at first created by Brahma, entirely Brahmanic, became separated into castes in consequence of works";[2] and the speaker, Bhrigu, being now asked what constitutes membership of a caste, replies that—

> He who is pure, consecrated by the natal and other initiatory ceremonies, who duly studies the Veda, practises the six kinds of works, and the rites of purification, who eats of offerings, is attached to his religious teacher, is constant in austerities, and is devoted to truth, is called a Brahman. He in whom are seen truth, liberality, inoffensiveness, innocence, modesty, compassion and devotion, is declared to be a Brahman. He who is unclean, is addicted constantly to all kinds of food, performs all kinds of work, has abandoned the Veda, and is destitute of pure observances, is called a Sudra.[3]

Here we have an ethical doctrine of equality, or—which is the same thing—of distinction by merit alone, strictly in line with the teachings of Buddha, in whose Order there was no thought of caste, and for whom the true Brahman was he who lived the perfectly pure and holy life.

---

[1] Summarized from Muir, *Sanscrit Texts*, vol. i. p. 133–138.

[2] Muir, i. 140.

[3] Summarized from Muir, i. 142.

7. *China.*—In China, a tradition is preserved of an epoch at which there was no slavery, and in the classical book of poems, the *She-King*, there is little that points definitely to the existence of the institution in its strict sense. Few prisoners were taken at that time, and therefore it was very possible that slaves were also few, but the evidence appears clear that slavery did exist in the Chow Dynasty.[1] The institution is certainly ancient, and even at the present day general, although no doubt far less important than in some other countries. Debt slavery no longer exists, and in the pacific land of China war has ceased to be a source of supply; but the slave-trade is general,[2] and the sale of daughters by their parents, and of wives by their husbands, particularly in times of famine, is a rich source of recruitment of the slave class. Kidnapping is also frequent. The slaves, we are told, are generally treated well, and there is that social equality between mistress and slave-girls which we so commonly find in the East, mitigating the harshness of legal institutions. But the protection of the slave is very inadequate. It is true that the master has not the power of life and death, but the punishment for killing a slave is only the bamboo.[3] Further, if death is caused by a canonical or legitimate punishment the man is held guiltless;[4] branding, we are told, is but a small part of the punishment of a slave for running away,[5] while the slave who strikes his master is liable to death by beheading.

8. Slavery, like polygamy and divorce, was an institution which Mohammed found fully established among his fellow-countrymen, which he disliked and set himself to mitigate, but could not attempt to abolish. A difference, however, is made between Moslem and non-Moslem captives. In a war with Moslems prisoners were not enslaved. If the prisoner on the battlefield became a Moslem he might not be killed, but according to the traditions he ought even to be set free, though if he became a Moslem subsequently he remained a slave.[6] The holding of

---

[1] Legge, *Prolegomena to the She-King*, p. 166 and footnote. In point of fact there are passages in the *She-King* itself which can hardly admit of two interpretations (vol. ii. part ii. book iv. ode viii. stanza 3).

[2] Douglas, *Society in China*, p. 346.

[3] The punishment applies to deliberate murder, or mutilation with death as the result, and if the slave is innocent, banishment is added (Kohler, cited by Post, *Grundriss*, i. 373).

[4] If an innocent slave is put to death, his wife and children become free (Kohler, cited by Post, *Grundriss*, i. 372).

[5] Douglas, *op. cit.*, p. 350.

[6] But according to Hidayah, the conversion to Islam on the battlefield did not necessarily save a man from slavery (Hughes, *Dictionary of Islam*, 597).

Moslem slaves was not, as such, prohibited, but their emancipation was regarded as an act of special merit. According to the tradition: "Whosoever frees a slave who is a Moslem, God will redeem every member of his body limb for limb from hell fire."[1] Mohammed sought mitigation of the slave's lot by ethical rather than legal means. The slave has no civil liberty, and can only possess property by the owner's permission. The master's power is unlimited, and he is not slain for the murder of his slave. He has unlimited power over his female slaves; as a matter of law he may prostitute them; he may give a slave in marriage to whom he will, though he may not annul the marriage when once completed.[2] On the other hand, the Prophet enjoins upon Moslems to exercise kindness to slaves, forbids the prostitution of slave-girls as a religious offence, and enjoins emancipation whenever a slave is able to redeem himself. "When a slave of yours has money to redeem his bond, then you must not allow him to come into your presence afterwards." "Behaving well to slaves is a means of prosperity, and behaving ill to them is a cause of loss." "Whenever any one of you is about to beat a slave and the slave asks pardon in the name of God, then withhold yourself from beating him. Feed your slaves with food of that which you eat and clothe them with such clothing as you wear, and command them not to do that which they are unable." Wrongful punishment, which, in some institutions, as we have seen, is a legal ground of manumission, was held by Mohammed to be a moral ground. "He who beats his slave without fault or slaps him on the face, his atonement for this is freeing him." As an illustration of the spirit in which this behest was conceived, we may quote the story of the Caliph Othman, who, having twisted his memlook's ear, bade the slave twist his own.[3] A further humane provision forbade the separation of mother and child: "Whoever is the cause of separation between mother and child by selling and giving, God will separate him from his friends on the day of resurrection."[4]

Conversely, the Prophet had certain promises for the dutiful slave: "It is well for a slave who regularly worships God and discharges his master's work properly"; and again: "When a slave wishes well to his master and worships God well, for him are double rewards." On the whole, the authorities tell us that the Prophet's rules of good treatment are observed. Masters are bound to maintain their slaves or emancipate them. To sell a slave of long standing is considered disgraceful, and female slaves are seldom emancipated without being provided for. The Egyptian slaves in Lane's time were numerous, but well cared for, and ranked socially above free servants. With all these mitigations it must be admitted that the recognition of the slave traffic by Mohammedanism has been, and is to this day, a curse to Africa and a source of disturbance to the world's politics.

---

[1] Hughes, *Dictionary of Islam*, p. 597.

[2] If a slave-girl has a child by her master she becomes free at his death, while, if the child be acknowledged by the master, she becomes free thereupon (*ib.*, 597, 598).

[3] *ib.*, 599.

[4] Though this saying is attributed to Mohammed, it is said by Tabir that "we used to sell the mothers of children in the time of the Prophet and of Abu Bekr but Umar forbade it in his time" (Hughes, 599).

9. *Greece.*—Like the Chinese, the Greeks had a tradition of a prehistoric epoch in which there were no slaves.[1] But in the Homeric epoch we find slavery in full swing, and the regular issue of the capture of a town is that the men should be slain and the women enslaved. Hector knows—and no thought is so bitter to him—that when Troy is taken and he himself is slain, it will be Andromache's fate to be a bondwoman to one of her conquerors. Her family had already suffered the same fate. The swift-footed, godlike Achilles had destroyed her father and her seven brothers, and had carried off her mother "with the rest of the spoil," though he afterwards set her free for an immense ransom. Now, Hector was all these to her, but the day would come when the Argives would sack the sacred town of Ilium and Hector in his turn be taken from her, and it would be her lot to fall into slavery.[2] Apart from legitimate warfare, piracy—which, for that matter, was in the Homeric view hardly less legitimate—was a frequent source of slavery. Many children suffered the fate of Eumæus the swineherd, and were carried off by the pirate and sold across the wine-dark sea. Slavery was hereditary, and the slave might be sold or put to death, as the faithless female slaves were hanged by Telemachus.[3] On the other hand, slaves might own houses and property of their own and live in the practical freedom in which we find the goodly Eumæus. Lastly, it should be noted that the slaves were not the only rightless class, for the stranger is also outside the protection of the law, though, even if a beggar and a fugitive, he is under the shelter of Zeus so long as he is a guest and claims the right of hospitality.

---

[1] Herodt., vi. 137; Busolt, *Handbuch*, p. 11.

[2] *Iliad*, vi. 414–495.

[3] *Odyssey*, xxii., Tr. Butcher and Lang, p. 374.

In the rural districts of Greece slavery remained rare. Pericles lays stress on the fact that the Peloponnesians are *autourgoi*—cultivators of their own lands.[1] It is even said that slave-holding was forbidden in Phocis and Lokris down to the fourth century.[2] But in the more developed states the growth of wealth meant, as always in the ancient world, increase in the number of slaves and—what was most fatal—the belief that work was not compatible with the dignity of a free man. Slavery remained a recognized fate for prisoners of war as an alternative to massacre, and even Plato could only hope that Greeks would abandon the practice of enslaving fellow-Greeks, restricting themselves to the barbarian, who, as Aristotle held, was the only natural slave. But through the institution of debt slavery the poorer classes in each state were frequently menaced with falling into enslavement. Before Solon's time the land was tilled by poor cultivators for the rich, and on their failure to pay five-sixths of their produce to the landlord, they fell into the position of serfs along with their wives and children. The prohibition of debt slavery and the pledging of the person by Solon was thus the salvation of civil freedom for Athens; and with the progress of Athenian democracy, although it was a democracy of free men only, the position of the slaves was indirectly improved. The master had the right of corporal punishment and of branding, but could not put a slave to death without a judicial decision.[3] A right of action for ὕβρις protected the slave from ill-treatment by strangers, and if maltreated by his master he could take refuge in the Theseum or some other asylum and demand to be sold—a demand which was investigated either by the priests or by a judicial process. On the other hand, the slave was not directly recognized as a personality by the law; he could only be represented by his master, who could sue for damages on his account. Except in murder cases he could only give evidence under torture, to which he might be given up at the will of his master, the belief being that this was the only way to get truth from him. He could only give evidence against his master upon a charge of treason. At the same time, he was often allowed to hold property and found a family, while he might buy his freedom by entrusting his earnings to a priest. Manumission was frequent and the hope of it used as a stimulus to industry, but the freedman retained a semi-dependent condition and had no political rights unless enfranchised by a special statute like that of Cleisthenes.[1]

---

[1] Thucyd., i. 141.

[2] Busolt, p. 12.

[3] This held in other states as well (see Isocrates, *Panath.* 181, in Busolt, p. 12). In the *Laws* (ix. 856) the slayer of his own slave is to undergo a legal purification corresponding to that imposed on the unintentional homicide of a free man, and incur no further penalty. For a case in which the killing of a slave might be treated as murder, cf. *ib.*, 872.

The development in the Dorian states was somewhat different. Here serfdom was more prominent than slavery, though the two institutions existed sometimes side by side. The Dorian conquerors divided part of the land among themselves, leaving it to be tilled by the conquered people as public serfs,[2] while part was left to its original possessors, who were personally free but had no political rights. Hence the two classes of Helots and Perioeci. The conquered population were bound to the soil, but could not be sold or set free except by the state, though the landlord, for whom they cultivated the land at a fixed rate, was their immediate master. The Helots of Sparta, as is well known, were seditious, and were ill-treated and frequently put to death in fear, or at least in anticipation, of some rising. The Penestae of Thessaly, who were otherwise in a closely analogous position to the Helots, were better off in this respect, as they could only be put to death by judicial process. In Crete there were two classes of serfs, those on the public land and those belonging to private owners, who might contract a legal marriage and hold and inherit property, and, according to Aristotle, were treated by masters on terms of social equality. Besides these classes of serfs there were slaves who might be bought and sold.

It should be added that the distinction between the citizen and the non-citizen is strongly marked throughout Greek history In principle the alien has no status of his own. He requires a *πρόξενος*—the official successor of the host who protects his guest — to represent him. Aliens were forbidden at Sparta altogether, and at Athens, where their numbers became great, they were as such destitute of rights, but in practice, on inscribing themselves on the list, they came under special state protection, for which, and for the right to exercise a trade, they paid a certain tribute. They still required a representative in a law court, and had neither the right of marriage with citizens, unless by treaty with their own state, nor the right of holding land.[1]

---

[1] Zimmern, pp. 356–358; Wilamowitz, p. 37. Slaves often carried on trade or business and must then have had a large measure of practical freedom (Wilamowitz, p. 120). On the other hand, the conditions in the mines of Laureion were admittedly abject (Zimmern, 394–396).

The intervention of the god—Apollo was especially active—in manumission illustrates the precarious nature of the slave's "rights." If he offered money to his master for his freedom, the master might take the money and refuse the freedom. Hence the precaution of depositing it with the god, who then carried through the trust (Farnell, *Cults*, iv. 179).

[2] But in some cases also as serfs to private masters, *e.g.* at Sparta (Wilamowitz, p. 37).

The organization of the city state, in fact, led naturally to a deeply marked distinction between the full citizen and all others, whether Greek or Barbarian, whether free or unfree. And we may take it as a mark of the ethical superiority of the Greeks that the logical consequences were so far mitigated, as we see them to have been in the legislation for the protection of slaves.

10. *Rome.*—At Rome the strict limitation of civil rights to full citizens, combined with the peculiar development of the powers of the paterfamilias, had a depressing effect upon the position of slaves. Not only captured enemies, but, even down to the time of Justinian, any unprotected foreigner was liable to enslavement. A free Roman could not become a slave within Rome itself, but deserters, and all those who were omitted from the census, could be sold abroad by the magistrate, children by their parents, debtors by their creditors, the thief by the injured party.

In practice, the slave of the earlier period was, as a rule, fairly well treated, and there was probably no great social distinction between him and his master; but he was in law a chattel. He had no family of his own; his union (*contubernium*) was no legal marriage. He had no status in a court of justice, but if he wished to sue for an injury could only do so through his master. Even if abandoned by his master he did not become free, but was the lawful property of the first comer. Not that cruel treatment passed without condemnation. Cruelty, even to animals, was subject to religious and even legal penalties.[2] Gross cases might involve the intervention of the censor. Though the slave could legally hold no property, custom secured him his own *peculium*, and he might even come to purchase his freedom.

Such was the position of the slave in early Rome. The growth of the Roman dominion, the rise of the great estates, submerging the old freeholder with his small plot of ground, and the facility of obtaining slaves from the numbers thrown into the market by capture in war and by traffic with pirates, combined to give Roman slavery towards the close of the Republic a new and dark character. The land was cultivated in many districts by slave-gangs, working in chains and confined by night in prison-workhouses under conditions described by Mommsen as such that by comparison with their sufferings it is probable that all that was endured by negro slaves was but a drop. But some relief came from the humaner ideas of advancing civilization, fostered by contact with Greek culture. In particular, the Stoic philosophy was the champion of the slaves. Seneca vigorously pleads their cause, and in particular reprobates the cruelty of the gladiatorial games. The jurists of the next century went further, and distinctly laid down that by natural law all men are equal and that slavery is a human institution contrary to nature. "Quod ad jus naturale attinet, omnes homines æquales sunt," writes Ulpian;[1] and more distinctly Florentinus: "Servitus est constitutio juris gentium, qua quis dominio alieno contra naturam subjicitur."[2] The Stoical teaching had its effect on legislation. The practice of the exposure and sale of children and of pledging them for debt was forbidden, while an edict of Diocletian forbade a free man to sell himself. Man-stealers were punished with death. The insolvent debtor was no longer made a slave. The right of bequest was granted to slaves. Some approach was made to a recognition of their marriage, not only after emancipation, but even[3] while in slavery, with a view to hindering the separation of families. Some legal security had already been given to their personal property, the *peculium*, by the prætorian edicts. The *Lex Petronia* (perhaps of A.D. 19) forbade throwing a slave to the wild beasts without a judicial decision.[4] Under Hadrian the power of life and death was taken from the master, and under Antoninus Pius the master who killed his own slave *sine causa* was punished as a homicide. An edict of Claudius had meanwhile enfranchised the old or sick slave who was abandoned by his master.[5] Under Nero the slave had been given the right to complain of ill-treatment to the magistrate. Under Pius the slave who was cruelly treated could claim to be sold, and by a special refinement it was held cruelty to employ an educated slave on degrading or manual work. Constantine deprived masters who abandoned new-born slaves of their rights over them.[6] Emancipation, though restricted by Augustus, was again made easier, and though the use of torture at judicial investigation remained, it was in some respects limited.[1]

---

[1] Busolt, pp. 12–14, 15, 68, 119. Cleisthenes, however, enrolled many μετοῖκοι among the citizens, and mixed marriages became frequent until the conditions of the citizenship were tightened up by a law of 451. After this, left-handed marriages with aliens obtained, the wife having a status below that of an Athenian but above a concubine, and the children being personally free (Zimmern, pp. 333, 334).

[2] Girard, *Manuel*, 89, 91.

---

[1] See Girard, p. 92.

[2] See Girard, p. 88, note 1.

[3] *Assez timidement*, Girard, p. 94.

[4] Girard, p. 94.

[5] *Loc. cit.*

[6] *ib.*, p. 95.

While the legal position of the slave was being thus improved by the imperial legislation, a new form of serfdom was growing up under the name of the Colonate. Some of the Coloni were probably foreign captives and immigrants settled upon the soil, while others were originally free tenants, who lapsed into a semi-servile condition through the insecurity of the times and largely through self-commendation. The status of the Coloni was regulated in the fourth century for fiscal purposes. Under Constantine, in 332, the Colonus could not quit his holding nor could he marry off the property of his lord. On the other hand, he could not be disturbed or be subjected arbitrarily to increased charges, and as the status was hereditary, we have here a fully developed predial serfdom with fixed but limited rights for the serf.[2] The master might inflict moderate chastisement, but the Colonus had a legal remedy for injury or excessive demands.[3] While the Colonate was partly recruited from the previously free peasantry, a compensating process was going on whereby rural slaves obtained a settlement upon the land as quasi-Coloni or Casati. They were assimilated to the Coloni by the law of Valentinian I. in 377, could not be sold apart from the land, and by the end of the seventh century were merged in the Colonate.[4]

We have now reached a point in the history of slavery at which two fresh influences have to be considered. The first of these is the barbarian conquests; the second that of the mediæval Church. The German tribes, generally speaking, recognized chattel slavery, and slaves were recruited from the sources ordinarily recognized among barbarians — war, unprotected strangers, voluntary commendation, and in certain cases debt (*i. e.* in cases of incapacity to pay the wergild. This was the only form of debt slavery known).[5] Even in Merovingian times the slave was a true chattel, whose life had indeed a price, but a price payable, like that of the Babylonian slave, to his lord, and not a fixed wer like a free man, but a sum proportionate to his value.[1] But besides the slaves, who were not numerous, the Germans recognized a class of imperfectly free men, the Liti, who had land of their own, without which a German could not be a citizen, but were in a dependent position. Their status varied very much from tribe to tribe, and from one period to another. At first tributary to the people, we find them at a later stage in subjection to an individual master. They took no part in the meetings of the people, and while originally they could plead before a court, their wergild was ordinarily half that of a free man. Their marriage with free people was a *mésalliance*, wherein the children followed the rank of the mother. As we approach the "Frankish" period we find their position more distinctly assimilated to that of serfs.[2]

---

[1] Ingram, *History of Slavery*, 60–64, etc.

[2] *ib.*, pp. 78, 79, etc.

[3] The colonus could also contract a valid marriage, but he had to marry within the domain unless he purchased a dispensation. The right of punishment was conceded to the master for certain specified faults (Letourneau, *L'Esclavage*, pp. 422, 423).

[4] Ingram, *History of Slavery*, p. 80; cf. Viollet, *Histoire du Droit Civil Français*, p. 312. Valentinian prohibited their sale apart from the land.

[5] Schröder, *Lehrbuch*, p. 46.

11. Thus the Middle Ages begin with two fairly distinct classes of the unfree; on the one hand, the slaves proper, whose position has been ameliorated in Roman law, but remains that of pure chattels by the law of the conquerors; on the other hand, a class of serfs in various degrees of unfreedom, which had already grown up in the later ages of the Empire and was reinforced by the corresponding class of Liti among the conquerors.

The moral influence of the Stoic philosophy which had inspired the imperial legislation for the benefit of slaves was now replaced by that of the Church. Like the Stoics, the Church accepted slavery as an institution which it did not seek to abolish, but it was so far influenced by the philosophic idea of natural equality that it set itself to minimize an evil which it could not cure. There was, indeed, one distinction which in the event became a distinction of importance. The Stoic philosophy was strictly universalist in character. For the Stoic all men were brothers and there was no distinction of nationality, class, or creed. For the Church all men ought to be brothers, but many men were, unfortunately, unbelievers, and the brotherhood of men was for many purposes limited to members of the Church. Thus it followed naturally from Christian principle that the holding of Christians in slavery, and still more the reducing of Christians to slavery by capture or by purchase, were actions which, if not wholly illegal, were contrary to the best religious teaching. Accordingly, from an early period the custom of enslaving prisoners of war began to be abandoned, at any rate in war between Christians, while the Church further set itself energetically to combat the traffic in slaves.[1] The custom of treating the slave as a fixture on the estate, which in the Empire had been made matter of legal enactment, was first adopted by the West Franks among the barbarians, and spread from them to other peoples by degrees.[2] The prohibition to enslave captives is treated by Gregoras as the traditional law "not only of the Romans and Thessalians, but of the Illyrians, Triballi and Bulgarians on account of the unity of faith."[3] But as this prohibition did not apply to pagans, until the conversion of the Slavs it left them as the one source open to the Western European countries for the acquisition of fresh slaves whether by capture or by traffic. The interval before their conversion lasted long enough, and this source of slaves was during that time sufficiently important to alter the European name for the institution. The former "servus" was now accurately represented in mediæval and modern language by the "serf"; a "Slav" was, with slight modification, in German, French and English, a "slave."[4] As the Slavs became converted to Christianity this source of recruitment for the slave class was cut off. There remained debt slavery, the sale of wife and children by husband and father, and the sale of a man by himself in time of need. All these sources of slavery remained in the earlier Middle Ages,[5] but they were already in process of decay. Self-enslavement was a desperate resource to which men were only driven in times of great need, and probably became infrequent in proportion as a more settled order made years of famine rarer; and the downfall of free men tended rather to swell the class of serfs than of slaves. The sale of men was on the whole opposed by the Church,[6] and debt slavery was also limited under religious influences. From the Carolingian age onward it became limited to a period necessary for the paying off of the debt,[1] and thus ceased to be a source of hereditary slavery properly so called. Meanwhile, the Church was also urgent in pressing the claims of manumission. The grounds for this are based on the broadest Stoical principle by Gregory the Great, who urges that "it is a good deed if men, whom nature created and brought forth free from the beginning and the law of nations has put under the yoke of slavery, are by the benevolence of a liberator restored to their liberty in that natural condition in which they were born." This is the full doctrine of human rights applied in somewhat halting fashion by way of recommending a beneficent practice. But, however haltingly applied, the moral conception of universalism introduced by the Stoic philosophy and favoured with limitations by the Church, was in principle fatal to slavery. That institution depends, as we have argued throughout, upon group-morality and the distinction between man and man. It is suited to the genius of primitive religions, whether in the form of separate family cults or of national creeds, but it is opposed in spirit to any doctrine which teaches that the same moral obligations must apply to all humanity alike. The Stoics first preached this doctrine with effect in Western Europe, but unfortunately, in applying it to the case of the slave, they were hampered by their view of the indifference of all outward circumstances, and preached that the slave in his slavery could be and should be as truly king and lord of himself as the emperor on his throne. The slave Epictetus was no less his own master than the Emperor Marcus Aurelius. The leaders of the Church accepted the principle of human brotherhood, but to them also worldly institutions were secondary, because salvation, if obtained in this world, was not obtained for this life, but for the life to come. They dealt with slavery, therefore, not so much from the point of view of the rights of the slave as from that of the duties of the master, and limiting their conception of equal rights by the principle of brotherhood in Christ alone, they took less account of the fate of those outside the Christian community. The results are written deep in history. The question is always asked how far the abolition of slavery in Europe was due to moral, how far to economic, causes. The answer appears to be that, so far as regards slavery proper, the two factors worked in harmony. The transition to serfdom was favoured by the economic situation.[2] But the disappearance of slavery is no less distinctly connected with the rise of universalism in ethics, first in philosophy and afterwards in religion. In neither form was the institution of slavery directly combated, but the indirect effect, first by ameliorating the position of the slave and thereby curtailing the rights of the master, secondly by encouraging manumission, and thirdly and most important of all by cutting off the sources of supply, was that slavery died of inanition, and by the end of the twelfth century was almost unknown in Europe. On the other hand, when the Christian world came into contact, a century or two later, as a conquering power with non-Christian races, there was no moral force at hand to resist the natural result, and new forms of slavery grew up.

---

[1] Schröder, p. 346. The price was, however, becoming a fixed tariff, and so gradually approximating to a true wergild (*ib.*, 218).

[2] Schröder, pp. 50, 51, 221–223. In the latter period their position still varied very greatly as between different peoples.

---

[1] For example, the Bristol slave trade was suppressed by Wulfstan, Bishop of Worcester, towards the close of the eleventh century. It had been prohibited previously by Ethelbert and Canute, and again by William the Conqueror. The selling of a countryman beyond the seas was forbidden in the "Dooms" of Ina, and the same prohibition, so far as Christians were concerned, in the "Dooms" of Ethelred (Pollock and Maitland, i. 85).

[2] Schröder, p. 219.

[3] See Grotius, book iii. chap. ix.

[4] In addition to possible sources of capture by war there was the slave trade in the hands of the Jews (Schröder, p. 459, quoting T. Waitz, 5, ii. 207).

[5] Schröder, p. 220.

[6] For example, at the Council of Coblenz, in 922 (Viollet, 311); and Wulfstan again is prominent with protestations against the enslavement of "cradle children." Nevertheless, the Church allowed a man to give himself up along with his wife and children as slave to an abbey, at any rate until he could redeem himself (Schröder, p. 220, note 26).

---

[1] See Schröder, 220, compared with 459.

[2] See Vinogradoff, *Growth of the Manor*, pp. 202–204. A great social reform like the abolition of slavery is seldom brought about by moral

12. The history of serfdom in the Middle Ages is more complicated and obscure, especially as to the causes and progress of its disappearance. We have seen a form of predial serfdom already growing up within the Roman Empire. We have seen also that, in addition to the slave class, the barbarian conquerors introduced into the constitutions of Western Europe imperfectly distinguished classes of semi-free citizens. All these elements contributed to form that great mass of the population which throughout the Middle Ages stood between the free man and the slave, and whilst slavery, as we have seen, was slowly dying out, serfdom for a long time continued to flourish and increase, recruited in part from the ranks of the slaves and in part from free men who, either by conquest or through economic causes, sometimes even by voluntary surrender of their freedom with a view to gaining the protection of a lord, swelled the number of the semi-free. Thus mediæval serfdom represents, on the one hand, a progress from slavery, and, on the other hand, a degradation of free men which is a not uncommon incident of epochs of unrest and of military conquest. It is not within our limits to characterize all the different grades of unfreedom which resulted. At most a general idea may be given. Serfdom, though not essentially

---

agencies alone. It is only when these can take advantage of a favourable political or economic situation that they get their way. Hence there is always on the surface of things colour for the cynical view that what appear to be moral improvements are really due to non-moral causes. But this view ignores the cases in which the political and economic forces tend in the opposite direction. In modern industry, for example, the circumstances, if we eliminate the moral factor, are eminently favourable to the development of a servile system, but every move in this direction has constantly been combated, on the whole with conspicuous success, by the deliberate efforts of men and women animated by a sense of justice and humanity.

and universally confined to peasants settled upon the land, tended in point of fact through the Middle Ages to lose its domestic and assume a territorial character. In the Frankish Empire the serf was, generally speaking, *glebæ adscriptus*. He might not leave his land, while, on the other side, he could not be sold apart from the land. He could acquire property, but had not complete control of it. He had to perform certain definite services to his master, which could not be altered arbitrarily, and in the earlier period he required the lord's consent to marriage, at any rate outside the domain, while he had also to pay for securing the lord's consent. He came under the protection of the law, having, as a rule, half the wergild and half the fines of a free man. In other respects, the position of the serf was extremely different among different peoples. Among the Saxons the Liti were a part of the people. Among the Frisians, and probably among the Saxons also, they could plead in court, and in cases of injury received a part of the wer themselves, only one portion going to their lord. Among the Lombards, on the other hand, the corresponding class could not appear in the courts, and the lord received their wer as though they were slaves. Between these extremes there were numerous intermediate grades.[1] As the Middle Ages advanced the heaviest burdens of serfdom tended to disappear in the Empire. In particular, the right to marry was acquired by the serf, and here, as has been mentioned in chap. v., the influence of the Church was probably decisive. The payment upon marriage, however, was continued, at any rate in cases where it took the bride off the estate, and in this case it still required the approval of the lord—not that the withholding of such approval would invalidate the marriage, but that it would render the parties liable to punishment.[2] The old right of the lord to inherit from the serf had been reduced [3] to the right to a duty on the inheritance; and the other restrictions on the serf's right to property were in process of disappearance. His personal tribute was converted into a rent upon his holding and his stock, and the limitation upon his power to alienate his land into a right of pre-emption on the part of the lord.[4] Finally, the growth of free cities favoured freedom. The serf, escaping to them, could be reclaimed by his master within a year and a day, but from that time onwards was free. The principle "Air makes free,"—that is to say, that the position of a person follows the general law of the land on which he is settled and does not depend upon his birth, became adopted in the later Middle Ages and naturally tended to emancipation.[1]

---

[1] Schröder, pp. 222, 223.

[2] *ib.*, p. 455.

[3] "*Schon in der vörigen Periode*"; Schröder, *ib.*

[4] Schröder, p. 456.

In France, the conditions of serfdom varied from province to province and from period to period.[2] A conception of the different grades of unfreedom covered by the term may be derived from the description given at the close of the thirteenth century by Beaumanoir. In one grade the whole property of the serf was at the mercy of the lord, who might also imprison him at pleasure; in the other grade, the lord could command nothing from the serf except a fixed customary sum, though he was still the serf's heir unless the children redeemed the succession.[3] Serfdom had already become rare and had in some provinces disappeared. Some serfs gained the right of paying a fixed "taille," and the right of holding and transmitting property were, generally speaking, acquired early. In a mediæval decision given at Paris the characteristics laid down as distinguishing a serf are (1) he cannot marry without the permission of the lord, and (2) he cannot give or bequeath goods. The second condition was the more general, and the milder form of serfdom persisted to the eighteenth century.[4]

In England, as elsewhere, serfdom was increasing just at the period when slavery was disappearing, and the number of serfs was swelled by the merging of different classes, slaves, villeins, and even free men, under a single denomination. The serf was not, properly speaking, *adscriptus glebæ*, although he passed with the manor when it was sold or inherited; but he could be moved from place to place and from one service to another at the lord's will,[5] and by strict right could be sold, though the right was rarely exercised.[6] The general characteristics of the villeinage were that the villein by birth could not marry his daughter without paying a fine, nor permit his son to take holy orders, nor sell his calf or horse; that he is bound to serve as a reeve in the manor, and that his youngest son succeeds to his holding on his death.[7] To this it must be added that while the serf has full legal rights in relation to third parties, the criminal law makes a great distinction between his lord and him. Thus, in the *Leges Henrici*, if the lord takes away the man's land or deserts him in mortal peril he forfeits his lordship, but the man must bear with the lord's ill-treatment of him for thirty days in war and a year and a day in peace. To kill one's lord is like blasphemy and is punishable with death by torture, whereas if a lord kills his man without cause a fine will suffice. This is the "high-water mark of English vassalism."[1] The Norman law is more liberal, but still draws a distinction. "If a lord kills his man he shall be punishable with death, if the man his lord he shall be drawn and hanged, and even if it be by misadventure he shall be punishable with death." The lord would be punished for killing or maiming the villein, but might beat or imprison his serf.[2]

---

[1] Schröder, p. 460. On the reaction which began in the fifteenth century, and which was due largely to the unfavourable economic position of the landless free labourers, see Schröder, pp. 460, 461.

[2] Viollet, pp. 307, 313 ff.

[3] *ib.*, p. 314.

[4] *ib.*, p. 315.

[5] Vinogradoff, *Villeinage in England*, p. 57.

[6] *ib.*, p. 151.

[7] *ib.*, p. 156.

The history of the decline of serfdom in the later Middle Ages, both in France and England, is not very clear. The lawyers who had been unfavourable to freedom down to the thirteenth century changed their attitude during that period under the influence of the new ideas of the state as a whole, no longer broken up into half-independent feudal territories, but as a single authority, having equal claim upon all its subjects alike.[3] That these more enlightened ideas accompanied the improvement of social organization was an extremely fortunate circumstance for the English serf. In England, as on the Continent, freedom might be acquired by escaping from the lord's jurisdiction, and the courts now favoured liberty. Feudal barbarism admitted this rough-and-ready method of emancipation largely because it lacked the means of securing the person of the runaway. With the growth of the kingly power and the better settlement of society, this primitive check upon oppression would naturally disappear, and thus where the ethical conception of freedom was wanting, the growth of civilization meant the prolongation of the old bondage and even, as in Russia and Germany, deterioration in its character. In England and France, upon the other hand, there was something of the nature of an ethical resistance to any tightening of the bonds, and thus the development of order had a beneficial effect on the slave rather than the reverse, for it tended to encourage the system of money payments as a substitute for labour service, and though in theory the serf remained the lord's man, yet in practice, in proportion as labour services were commuted for a money rent his position became scarcely distinguishable from that of a tenant farmer. From whatever causes, servile tenure was in fact rapidly becoming obsolete during the fourteenth century. One of the latest records we have of the existence of bondmen in England is in a document in which

---

[1] Pollock and Maitland, i. 300.

[2] *ib.*, i. 416.

[3] Vinogradoff, p. 131.

Elizabeth enfranchises some remaining serfs of the Crown in 1574,[1] but there were Scottish miners who remained serfs down to 1799 and were not particularly desirous of having their condition changed.

Yet elements of servility remain in the position of the labourer. The Statute of Labourers in 1348 was passed with the intention of preventing workmen from taking advantage of the rise in wages due to the depopulation of the country by the Black Death, and was the beginning of a series of labour laws which brought the labourer into a position which, as described in Blackstone,[2] stood as follows: (1) The law first of all compels all persons with no visible effects to work; (2) defines their hours in summer and winter; (3) punishes those who desert their work; (4) empowers justices to fix the rate of wage for agricultural labour and punishes those who give or exact more than the wages so settled. We know that these laws were largely a dead letter. Nevertheless they illustrate the attitude of the governing classes. What was in practice more important was the Statute of Apprentices (Fifth of Elizabeth), which restricted the right to carry on a trade to those who had served an apprenticeship, while the operation of the Poor Law, especially of the Act of Settlement, tended in practice to restrict the motions of the English labourer almost as much as regular serfdom would do.[3] Indeed, had this statute been rigidly and universally carried out, it would have had the effect of fixing the labourer in his parish like a predial serf without the right upon the land which redeems the serf's position. To describe its practical operation in these terms might savour of exaggeration, yet the historian of the Poor Law declares that with this Act the "iron of slavery entered into the soul of the English labourer," and those who know the midland or south country labourer of the present day can see the scar still there. Again, Blackstone writes—

---

[1] This is sometimes spoken of as the latest record, but Professor Vinogradoff informs me that this is not absolutely correct.

[2] I., p. 414.

[3] In the effort to deal with vagabondage the law has at different times come perilously near to re-introducing slavery. A statute of Edward VI. ordained that all idle vagabonds should be made slaves, fed on bread and water and refuse meat, wear iron rings, and be compelled by beating, chains, etc., to do the work assigned to them. This was repealed in two years. It is now laid down that slaves acquire freedom by landing in England, but this does not affect the right a master may have acquired to a man's perpetual service, and "the infamous and unchristian practice of withholding baptism from negro servants, lest they should thereby gain their liberty, was totally without foundation." The Law of England will not dissolve a civil obligation between master and servant on account of the alteration of faith in either of the parties, "but the slave is entitled to the same liberty in England before as after baptism; and, whatever service the heathen negro owed to his English master, the same is he bound to render when a Christian" (Blackstone, i. 412, 413).

> "A master may by law correct his apprentice or servant for negligence or other misbehaviour, so it be done with moderation; though if the master's wife beats him, it is good cause of departure. But if any servant, workman or labourer assaults his master or dame he shall suffer one year's imprisonment and other open corporal punishment not extending to life or limb."

Further, in Blackstone's time a servant through whose negligence a fire happens forfeits £100, and in default of payment might be committed to a workhouse with hard labour for eighteen months. It is not difficult to recognize in these distinctions between the rights of master and servant an echo of the law as to lord and serf.

Nor was the English law altogether free from caste distinctions in the earlier part of the modern period. The benefit of clergy, which had originally been an immunity claimed by ecclesiastics from the secular courts, had been gradually transformed into a mere class privilege, whereby educated persons could escape punishment for secondary offences. Thus, in the seventeenth century the question whether a man would be hanged for larceny or not depended on whether he could read, unless indeed he had forfeited the benefit of clergy by contracting a second marriage or by marrying a widow. In 1705 the necessity for reading was abolished, and benefit of clergy could thereafter be claimed by all persons alike for a first offence in the case of secondary crimes. But important distinctions were still made. The offender, unless he was a peer or a clerk in orders, was, until 1779, branded in the hand and liable to seven years' transportation. Clerks in orders, meanwhile, might plead their clergy for any number of offences, and peers had received the same privileges as clerks by the statute of 1547. On the other hand, during the eighteenth century benefit of clergy was gradually withdrawn from an increasing number of offences, but it was not until 1827 that it was finally abolished, and even then it was doubtful whether the privilege of peers fell with it. This question was not settled until 1841, when the statute of Edward VI. was repealed, and peers accused of felony became liable to the same punishments as other persons.

When it is remembered, further, that the whole administration of petty justice and of the preliminary process in graver crimes was in the hands of the landed gentry, upon whose estates the labouring classes, rendered landless by economic changes, were fixed, as has been shown, by the Act of Settlement; when it is further borne in mind that the same justices had the power of fixing wages, and that the whole of the working classes in the country were always upon or over the verge of pauperism and dependent upon the support of the poor law, the control of which was substantially in the same hands, it will be recognized that the nominal freedom of the English labourer down to the beginning of the reform period was a blessing very much disguised, and that the reality compared unfavourably with the lighter forms of serfdom. The first stages in the progress of the factory system made matters even worse. The new demand for child labour introduced for a period what was in essence, if not in name, a form of child slavery, pauper children being regularly imported in the manufacturing districts as apprentices, and set to work under conditions as to hours and also as to housing which would have been onerous even at less tender years. But these abuses, when fully realized by the public, were met within a period of time which, in comparison with the normal slowness of reform, may almost be called brief, by a series of legislative measures, overriding the so-called freedom of contract, and protecting the children from their legal guardians. The factory system, in short, reproduced the economic conditions under which, in other circumstances, a form of slavery would have arisen. And from this result England and the other industrial nations with it have been saved by a distinctively ethical movement.

On the Continent the direct manumission of serfs was perhaps more frequent than in England. Enfranchisements *en bloc* were common. We even hear of such things being done by abbeys. St. Benedict of Aniane, in the ninth century, emancipates serfs on the land which he receives.[1] Charters were sometimes given upon payment to whole villages and by kings to whole counties. In 1315 Louis X. invited all the serfs on the Crown lands to purchase their liberty, but the price asked was too high. A general abolition of personal serfdom was demanded by the Third Estate at Blois in 1576, and again at Paris in 1614. This was not granted, but the institution was quite unknown in many provinces in the seventeenth century. It remained in Franche-Comté, Bourgogne, Alsace-Lorraine, Trois Évêchés, Champagne, Bourbonnais, La Marche, Nivernois, Berry; but the burden was relatively light, and when the Duke of Lorraine proposed a money commutation for their services in 1711, the serfs who were to benefit by it themselves raised objections. The question was raised by Voltaire, and by an edict of 1779 Louis XVI. enfranchised the serfs of the royal domain and encouraged general abolition. Serfdom was finally abolished in France without compensation on the night of August 4, 1789, along with the other incidents of feudal tenure. At the same time fell the whole system of privileges which had made the nobles and the clergy castes set apart from the mass of the people.

---

[1] Ingram, *op. cit.*, p. 93.

In the German Empire the progress, which we have seen going forward until the thirteenth century, was arrested in the fifteenth, and a reaction took place, leading to the Peasants' War at the time of the Reformation. Serfdom lingered on, but in 1719–20 it was abolished on the Crown lands of East Prussia by Frederick William I. Frederick the Great attempted to forbid corporal punishment and aimed at a general emancipation, but achieved little except in Prussian Poland. The liberation of the German serf was to come indirectly from the French Revolution. Napoleon carried out emancipation in the conquered territory, and as part of the general preparation for resistance to France, the Prussian statesmen issued an edict in 1807 by which the whole population of Prussia was made free by a stroke of the pen.[1] Serfdom admitting arbitrary exactions and corporal punishment remained, notwithstanding the efforts of Maria Theresa and her successors, in a great part of the Austrian Empire down to 1848. It was abolished in Russia in 1861. The emancipation of the Russian serf may be taken as the final termination of the enslavement by law, whether complete or partial, of white men. The later stages of the process in the more backward countries were thus clearly deliberate acts of government, based upon general conceptions either of human rights or of the conditions of social well-being. And on the whole the continental serf gained something through the delay. Emancipated in England more by economic causes than on ethical principles, he tended to become a landless labourer, more abject in some relations than a serf with defined rights. On the Continent, in most countries, he retained his land, subject to servile restrictions, and when the ethical movement struck off his chains, it left him a free peasant cultivator. In England his practical freedom was to be won at a later date and at the cost of a depletion of the rural districts, which is raising the agrarian problem in a form elsewhere unknown. So much depends on the nature of the causes determining a change like that from servitude to freedom, however great the inherent importance of the change itself.

---

[1] Ingram, *op. cit.*, pp. 119–129.

13. The abolition of slavery and serfdom in the modern world may, from one point of view, be described as a process whereby the obligations of group-morality were extended so as to cover all Christians, or, at any rate, all white Christians. Unfortunately, this result is not the same thing as a strictly universalistic morality. As long as the Christian communities lived in isolation and did not come into touch with weaker races as their conquerors, the matter was not one of any very practical moment, but when, with the discovery of a new world and the circumnavigation of Africa, a fresh economic position arose, making slave labour industrially advantageous, while at the same time a vast black population was put at the disposal of the far stronger white man, slavery grew up again in a new and, in some respects, a more debased form. It is worth noting, as illustrating the ethical principle involved, that the old Roman slavery had never entirely disappeared. In the eleventh century we find Gregory VII. exacting from Demetrius of Dalmatia a promise not to sell men. There was a slave trade with Mussulmans in Venice and in Sicily right through the mediæval period. In the twelfth century slaves were sold at fairs in Champagne, and Saracen slaves were found in the south of France in possession of a bishop at that period.[1] Though the French law in the sixteenth century recognized that no slave could exist on French soil, the maxim, as formulated by Loisel, is applied to those who enter France only upon their being baptized. But these smouldering embers of slavery were now destined to burst out into flame. The Portuguese began importing negro slaves in 1442, and obtained a bull sanctioning the practice from Pope Nicholas V. in 1454. The reason was characteristic. A great number of the captives had been converted to the Catholic faith, "and it is hoped that by the favour of the divine clemency, if this process is continued, the nations themselves may be converted to the faith, or at any rate the souls of many from among them may be made of profit to Christ."[2] In fact, the hope—probably the quite sincere hope—of saving souls paralyzed, to say the least, the protest which would otherwise have been made against what was in essence a revival of one of the worst features of barbarism. It was quite a logical exception made by Pope Calixtus III. in 1456, when he prohibited the enslavement of Christians in the East, and by Pius II. in 1462, when he severely blamed Christians who

---

[1] So at Narbonne and in Provence in the thirteenth century, and in Roussillon down to its annexation by France. A Saracen was publicly sold in 1296 (Viollet, pp. 329, 330).

[2] Viollet, p. 330.

enslaved negro neophytes. When Columbus shipped 500 Indian prisoners to Spain to sell as slaves, the law of the case was investigated by Isabella, and, theologians differing in their view, she finally ordered the Indians to be sent back to their homes.[1] Meanwhile, in the New World the Spaniards were making slaves freely of Indians and treating them with great cruelty. Las Casas, impressed with the horrors which he saw, was struck with the idea that negroes would endure that bondage without sinking under it, and with the most benevolent intentions gave the most unfortunate advice that residents in Hispaniola should be allowed to import negro slaves.[2] Regular black traffic accordingly began, notwithstanding successive efforts made by the Popes, when they grasped the situation, to suppress it.[3] All the great trade nations of Western Europe joined in the traffic, and must share the blame alike. Europe itself was not preserved whole from this scourge. In England, indeed, it was held in the case of the negro Somerset (1772) that English soil emancipated, but this doctrine, which had been good law in France in 1571, was suspended in 1716 and again in 1738. Slaves became common, and were even sold at Paris down to 1762. From the sixteenth to the eighteenth century the Popes themselves had Turkish galley-slaves, and Louis XIV., besides these, had Jewish slaves and Russian captives.[4]

This second slavery was put down by a distinctly ethical movement. It began with the Quakers in the seventeenth century. George Fox had already desired the Friends in America to treat their negroes well, and "that after certain years of servitude they should set them free." In 1727 the Society declared that slavery was not an allowed practice. In 1761 they excluded from membership all concerned in it, and in 1783 formed an association for liberating negroes and discouraging the traffic. The Pennsylvanian Quakers had condemned it from 1696 onwards. Many leading names in English thought are quoted in Dr. Ingram's History as opponents of the slave trade from the end of the seventeenth century to that of the eighteenth. Among them are Baxter, Steele, Pope, Cowper, Day, Hutcheson, Wesley, Whitefield, Adam Smith, Johnson and Paley. An

---

[1] Ingram, 142, 143.

[2] "Which advice," says Las Casas himself, "after he had apprehended the nature of the thing, he would not have given for all he had in the world" (Ingram, 144).

[3] *e. g.* The Bull of Urban VIII., 1537, and of Benedict XIV., 1741 (Viollet, p. 331).

[4] Viollet, p. 332. The position of slaves in France and her colonies was minutely regulated by the Code Noir of Louis XIV., 1685.

English Committee for the abolition of the slave trade was formed in 1787, and the motion for abolition, which was defeated in the House of Lords in 1794, was carried under Fox's premiership in 1807.[1] The French Revolution had gone further. In 1791 the old principle that the French soil emancipates was reasserted by the Convention, and in 1794 slavery in the French colonies was abolished by decree. But the moment was ill chosen, as Hayti was in revolt, and Napoleon restored slavery in 1802. At the Congress of Vienna, British influence was active in obtaining the consent of other nations for the suppression of the slave trade, and France acquiesced, in the treaties of 1814 and 1815. The British and Foreign Anti-Slavery Society was founded in 1823, and secured Abolition ten years later. Slavery was abolished by France in 1848, by Portugal in 1858, by the Dutch in 1863, and by Brazil in 1888. The founders of the United States had been opposed to slavery and attempted to exclude it by the Constitution, but were defeated by the opposition of South Carolina and Georgia. An Abolition Society was formed in 1774 and reconstructed by Franklin in 1787. The Northern States adopted measures for abolition between 1777 and 1804, and importation was prohibited by the United States in 1807. An Anti-Slavery Society was founded in 1833, and at the cost of civil war emancipation was proclaimed in 1863.[2] Unfortunately, the legacy of slavery remains in that racial feeling which is the greatest unsolved problem of the American Commonwealth, and which does not become less serious as the negro population increases and extends its borders.

14. Slavery is no longer admittedly practised by any white nation. On the other hand, the problem of dealing with coloured labour has not been yet satisfactorily solved. Here and there "forced labour" has been allowed, and forms of contract labour are common, which, to say the least, are difficult to keep free from every servile taint. The questions raised by the various forms of contract allowed by the British and other civilized governments since the abolition of slavery belong, however, rather to the controversies of the moment than to the historical study which is the object of the present work, and I do not propose to discuss them here. It may, however, be allowable to say that the modern tendency to the concentration of wealth, or at least of the forces directing labour in a few hands, taken in conjunction with the vast reserves of cheap labour to which access has been given by

---

[1] The trade had been abolished by Denmark in 1792.

[2] Ingram, 154–182.

the opening-up of China and the African continent reproduce in very essential features the conditions out of which great slave systems have arisen in the past, and the temptation to utilize the cheap and relatively docile labour of a weaker and perhaps a subjugated race against the well-organized battalions of the white artisans, is one by which leaders of industry, being human, cannot fail to be attracted, and therefore raises possibilities which no statesman can ignore.

The result of this brief review is to show that the principle of the equality of all classes before the law can hardly be said to have been accepted by the Western world as a whole before the revolutionary period. The whole structure of mediæval society had been based upon the principle of subordination and was moulded in the spirit of caste. Confronted at all times with the doctrine of Christian Brotherhood, and, later on, with the principle of natural equality, this structure was also undermined by the growth of industry and the complex forces, ethical, political, and economic, which transformed the feudal kingdom into the organized state. Under these influences slavery proper disappeared, as we have seen, in the course of the twelfth century; and in the most advanced nations serfdom followed it in the period between the thirteenth century and the sixteenth. But for the completion of the work fully two more centuries were required. In the less advanced countries serfdom itself lingered on into the nineteenth century. In France, though caste privileges grew more and more out of harmony with the spirit of the time, they could only be destroyed by a revolution. In England, where they were rather a practical consequence of political superiority than the express subject of legal enactment, they yielded later, but more peacefully, to the influences of the Reform period. So modern is the change whereby law and public institutions have turned towards equality rather than subordination as their ideal. An ideal such equality must, perhaps, always be. Wealth and influence will always have their weight, not only in social life, but in the business of government and even in the administration of justice. Yet the true spirit of caste is gradually being reduced to a shadow of its former self. Expelled by slow degrees from the sphere of law and government, it has been left to amuse itself with a mock kingdom in the region of ceremonial and social intercourse, in which the ghosts of bygone realities keep up a mock state for the amusement of the philosopher.

As long as class, racial, and national antagonisms play a part in life we cannot say that group-morality has been altogether overcome. Nevertheless, the evolution sketched in the present and preceding chapter is of no small significance for ethics. At the outset men are organized in small groups bound to mutual aid and forbearance, while they are indifferent or hostile to outsiders. There is no organic bond uniting humanity as a whole. Hence the captive enemy and, in principle, unless there are special reasons to the contrary, the peaceful stranger are "rightless." But by degrees a wider conception of obligation arises. Fellow-Greeks, co-religionists, fellow-white men, ultimately fellow-men, enter the circle to which obligations apply, and even the violence of conquest is limited by the rights attaching to the conquered as human beings. The "group" is thus widened till it includes all humanity, at which point group-morality disappears, merged in universalism. But the rights first recognized are those of the person. To take into account the rights of the organized community is a further step, following logically from the first, no doubt, but following slowly. Here, too, we recognize a slow advance in the civilized world, an advance which, if unimpeded, would finally overcome the "group-morality" of nations in favour of a true internationalism of morals and law.

Turning next to the internal composition of the community, we saw that the primitive group was relatively small and homogeneous. But as society grows divisions come, and a new form of group-morality arises—distinctions of high caste and low caste, bond and free, and the like. In engendering, accentuating and maintaining these distinctions, military conquest, economic inequalities, religious differences, race and colour antipathies, have all played their part, and up to the middle civilization social divisions probably tend to increase rather than diminish. Combated by the teaching of the higher ethical and religious systems, they have been mitigated and in large measure overcome in the modern world. Most tenaciously maintained where the "colour line" is the outward and too visible symbol of deep-seated differences of race, culture, character, and tradition, they are countered even here by the fundamental doctrine of the modern state that equal protection and equal opportunity are the birthright of all its subjects. Thus, though the colour line is the last ditch of group-morality, here too in the modern period, taken as a whole, Universalism has made great inroads. With the improvement of communication and the growth of commerce, Humanity is rapidly becoming, physically speaking, a single society—single in the sense that what affects one part tends to affect the whole. This unification intensifies the difficulties of ethics because it brings into closer juxtaposition races and classes who are not prepared by their previous history to live harmoniously together. Hence it is not surprising that law and morals do not show a regular, parallel advance. Nevertheless, the upshot of the evidence here reviewed is that, ethically as well as physically, humanity is becoming one—one, not by the suppression of differences or the mechanical arrangement of lifeless parts, but by a widened consciousness of obligation, a more sensitive response to the claims of justice, a greater forbearance towards differences of type, a more enlightened conception of human purposes.

CHAPTER VIII

PROPERTY AND POVERTY

1. AMONG primitive peoples there is comparatively little scope for the institution of private property. Apart from land and its produce, of which we shall speak later, such peoples possess little which can be appropriated, except their small personal belongings. These, it would seem, belong to the individual from the first. Indeed, tools and weapons are so completely identified with their owner that they are very frequently buried with him or destroyed, in the one case that he may use them in his future life, in the other because, as belonging to a dead man, they are regarded as dangerous and are therefore best done away with. Now the recognition of individual property in personal belongings and of personal or communal property in land and its produce may both be explained as resting on one and the same principle—the principle of occupation and use. It is the individual who actually carries and handles the spear or fishing-net, the family or the tribe which actually occupies and hunts over the land. But we must also allow for the influence of sacral conceptions. Thus, among the Kunama, Dr. Tylor remarks that a hedge may be mended by a cotton thread.[1] That would certainly not do in the civilized world. But then the civilized man does not fear that death will follow from a breach of the fence as a magic result. In Oceania,[2] where taboo reaches its extreme development, it is freely used for protection of property, real and personal. In ancient Babylon boundary stones were secured by an imprecation[3]—that is to say, a curse was laid upon them which would fall on those who should remove them. The heap of stones which Jacob and Laban set up were to be witnesses between them, and it is possible that here, too, the power to punish the transgressor was conceived as lying within the stone itself; while at a later stage, in accordance with the regular development of religion, the curse was laid upon him who moves the stone by Yahveh. When we read of the Western Eskimo, whose honesty is highly praised by travellers, that other people's goods left about with a stone placed over them are quite secure, we can hardly

---

[1] Tylor, *Contemp. Review*, April 1873, p. 704.

[2] Ratzel, *History of Mankind*, vol. i. p. 285.

[3] Maspero, p. 762.

avoid wondering whether this is due to simple honesty of character or to the magic qualities of the stone.

The rights of property stand on much the same footing as other rights in early society. When simple peoples are described as dishonest it is generally because they steal from strangers or outsiders. But this is only an illustration of the general principle that strangers have no rights, except in so far as protected by the law of hospitality. Thus, among the Red Indians, the guest was safe while under the roof of his host, but might be freely robbed on the prairie.[1] Within the community property is, as a rule, respected.[2] There are, indeed, exceptions. Thus among the Nagas,[3] in some tribes theft is punishable by fines, beating, and even death, but in two of the tribes it is not considered disgraceful at all. In some peoples successful theft is held as by no means dishonourable. The case of Autolycus has been referred to in chapter i. Among some of the Eskimo theft, when discovered, is merely held a clever trick;[4] among the Balantes in Africa it is held honourable, while among the Kaffirs the children of chiefs may steal within their own tribe.[5] Even in some civilized or semi-civilized communities, as at one time in ancient Egypt, we find a recognized organization of theft under constituted authorities, who duly restore the property to the owner on payment of a portion of its value.[6] But in general the difference between early and developed law is that the former treats theft rather as an injury to be avenged, the latter as a crime to be punished. This is illustrated by the distinction between the "manifest" and the "non-manifest" thief—that is to say, between the thief taken in the act and the thief who has got clear away.[7] The owner, surprising the thief in the act of carrying off his goods, will naturally attack, and will very likely kill him. If so, who, on primitive principles, can blame him? But if he does not come up with the thief, but finds out the robbery in cold blood, then he ought to control his vindictive feelings, and be thankful if custom allows him to get restitution, with perhaps something more, for his pains. In early English law, the thief caught red-handed could be hanged without opportunity of self-defence before an impromptu court. But an action for robbery, even in the twelfth century, involved only a double restitution.[1] In the Book of the Covenant, "if the thief be found breaking in and be smitten that he die, there shall be no blood-guiltiness for him. If the sun be risen upon him, there shall be blood-guiltiness for him." The owner should not let the sun rise upon his wrath. The thief must merely make restitution. If the stolen animal is alive he shall pay double, if he has killed or sold it "he shall pay five oxen for an ox, and four sheep for a sheep."[2] The Moors, on the other hand, at the present day do not punish theft by night, but only by day, and then only when the thief is caught in the act.[3] It is clear that in such distinctions as these the law takes account, not of the right and the wrong of the case, as we should conceive it, but merely of the degree of resentment natural to the man who is wronged and of the manner in which he may be expected to appease it. Clearly, wherever the thief is allowed to keep a part of the stolen property, or has simply to make restitution, stealing can hardly be considered a wicked act in our sense of the term, and even where restitution is double or manifold, we must regard it as rather intended to satisfy the injured party than as a punishment of the wrong-doer.[4]

---

[1] Waitz, vol. iii. pp. 129, 130.

[2] Cf. Schoolcraft-Drake, vol. i. p. 222. "Theft is very scandalous among them since they have no locks but those of their minds to preserve their goods." (From Coldan's account.) Among the Dakotas pilfering by women and children was common, but the men despised it as too low a practice for them (*ib.*, vol. i. p. 206).

[3] Godden, *J. A. I.*, xxvi. p. 174.

[4] Waitz, vol. iii. p. 309.

[5] Post, *Afrik. Juris.*, vol. ii. p. 83. Similarly there was a class of privileged thieves in Ashanti.

[6] In Abyssinia thieves are organized under a chief who pays tribute (Post, *loc. cit.*). Waitz (vol. ii. p. 218) mentions that in some parts of Africa the thief keeps half of what he steals. For the organization of thieves in Egypt, see Diodorus, i. 80, 1.

[7] See Pollock and Maitland, vol. ii. p. 497. Instances of the "receiver" being vested with ownership of movables occur in contemporary Africa (Post, *Afrik. Juris.*, vol. ii. p. 162). On the Congo, according to Waitz (*loc. cit.*), secret theft is held slavish, but open robbery lordly, and he states that the Kaffirs generally condemn theft, but admire it when cleverly executed (*op. cit.*, 401).

On the other hand, there are also many cases, even in the uncivilized world, where theft is severely punished, not only by fines, which are a form of manifold restitution, but also by beating, enslavement, mutilation, humiliating exposure, and even death.[5] Indeed, as soon as public punishments arise, it is generally punished with great severity. Thus, in England, an action for robbery, which only involved double restitution in the time of Glanvil, who died in 1190, was punished by death and mutilation in the time of Bracton, who died in 1268,[6] and a little while later death was the invariable penalty, even in the end for the theft of a shilling; while smaller thefts—petty larceny—were punished by whipping, pillory, or by the loss of an ear, and on repetition by death.[1]

---

[1] Pollock and Maitland, vol. ii. pp. 494 and 579.

[2] Exod. xxii. 1–4.

[3] Post, *Afrik. Juris.*, vol. ii. p. 85.

[4] Restitution is a very common penalty in Africa (Post, *Afrik. Juris.*, vol. ii. p. 83).

[5] Instances of all these in Africa (Post, *loc. cit.*).

[6] Pollock and Maitland, ii. 494.

Socially, by far the most important question of property concerns what in modern phrase is called the ownership of the means of production. The man, the household, the clan, which commands the instruments and opportunities of providing for the maintenance of life is economically free. He who has to use the property of others is, so far, dependent, and it is this dependence which is the centre of the modern social problem. Now in all societies the land is one of the essential means of production, but in a high economic development the plant erected on the land becomes equally or more important. In the lowest grades, on the other hand, where the instruments of tillage are very simple, or where there is no tillage at all and the only weapons required are those of the chase, where a rude shelter can be put up anywhere for the night and there is no important accumulation of personal belongings, the land is the only means of production that need seriously be considered. He who has access to the land has, if he be able-bodied, the means of maintaining himself. The question of the evolution of property in its earlier phases, then, is the question of land ownership.

How, then, is land owned in primitive society? The evidence available is of the same kind that we find in other departments. There is the history of civilized society and the indications to be derived from its most archaic institutions, indications which in this case have given rise to lively and prolonged controversy. There is, secondly, the mass of custom observable among contemporary societies of the lower culture, which, as evidence for historical development, may be used provisionally with the customary cautions. Unfortunately, this evidence itself is by no means free from ambiguity. It does not enable us to state in universal terms that either the communal, the individual, or any other principle flourishes exclusively at a given grade, and what it has to teach can only be educed by careful and elaborate comparisons.

---

[1] In Rome the Law of the XII Tables—like most laws of that stage—distinguished the thief caught in the act—the *fur manifestus*—from the thief not caught in the act—the *fur nec manifestus*. The latter must make double restitution, the former is punished corporally—in the case of robbery by night or with the strong hand, by death; in other cases by beating and slavery. In the later legislation the injured party had choice of a new form of criminal action whereby corporal punishment might be inflicted, or of the *actio furti* which carried *infamia* and double or quadruple restitution (Girard, pp. 392–394). In the Code of Hammurabi, both death and restitution are recognized (sections 6 and following). Manu prescribes fines, corporal punishment and mutilations for thefts of various kinds (viii. 319 ff.).

Among hunting peoples as a whole our authorities most frequently deny any individual and family ownership of land. Thus, among the Thompson River Indians there was no private land. Even the territory of the band was not held exclusively but was common tribal property. But it must not be supposed that the tribal territory was a mere no man's land. On the contrary, though the related Shushwaps might be allowed on it, trespass by any one else might be punished with death. Further, game was divided among the hunters, and a rich kill generally among the fellow villagers.[1] The tribe, then, exercises true exclusive ownership as against all outsiders except certain connected people whom it tolerates, and knows of no internal divisions. This is true tribal property and is a by no means infrequent institution.

Very often, however, land belongs in common to a section of the tribe, a clan, or a local group. Thus, among the Central Australians, while each tribe has its known and definitely marked area, within it each local group is similarly the collective owner of a defined portion. This portion is not further divided but is free to all its members to dwell in or to hunt over as they will, trespass by an outsider being strongly resented, and the boundaries being habitually preserved. Moreover, in this case we can find something of a sacral basis for the right of property, for in strictness it would seem that the land belongs to the ancestors of the "Alcheringa" whose souls are deposited at known spots in the area, whence they issue from time to time and are reincarnated in living members of the group.[2] Among the hunting and fishing tribes of the Pacific Coast the clan is, as a rule, the landowner. Thus, among the Lkungen Salish, there were twelve gentes, each with exclusive rights of hunting and picking berries and fishing on a definite stretch of coast or river bank.[3] Among the Thlinkeets there was tribal, gentile, and family land.[4] Sometimes the limits are vague and we come nearer to the conception of a no man's land. The very primitive Tsekehne have a traditional hunting ground for each band, but the limits are ill defined and they often hunt one another's land.[1] Among the Central Eskimo there were no precisely limited reservations. Each family might settle where it liked, but visitors from a strange tribe would be an exception, and any newcomer would have to fight a duel with the risk of being killed in case of defeat.[2]

---

[1] Teit and Boaz, *The Jesup Expedition*, 1900, p. 293. The only exception to communal ownership was that artificial fishing stations and deer fences belonged to those erecting them and were hereditable. There are very similar rules among the Eastern Shushwap (Teit, vol. ii. p. 572).

[2] Spencer and Gillen, ii. 13, 14.

[3] Boaz, *B. A.*, 1890, p. 569. So, too, among the Kwakiutl (Boaz, *B. A.*, 1889, p. 833).

[4] Swanton, *R. B. E.*, xxvi. p. 425.

Not only is the land common to the tribe, clan or group, but its products are subject to rules of customary distribution tending to equalize the chances of obtaining food, to share superfluity, and obviate starvation. Thus, in Greenland, a godsend like a walrus or a whale is divided among the whole village, and in any case, if there is a famine, the successful hunter must share his spoil.[3] So, among the Central Eskimo, the regulations determining the ownership of game and the obligations of the hunter to his village are elaborate. A whale belongs to the whole settlement. If food is plentiful a seal is reserved for a man's housemates (usually a joint family), but if scarce its flesh is distributed among all the hunt.[4] In Australia, the rules of distribution are numerous and varied. The Wiradjuri divide food among the whole community. The Gringai make equal division of the game. The Chepara seem to share all the food in the camp.[5] Some rules are elaborate and quaint : "In the Wotjobaluk tribe . . . when a man killed a kangaroo and there were in the camp his mother's brother, an old man, his wife's parents, a married man and two young men, he gave the body of the kangaroo to the old man, who gave some to his sister's son who was with him ; the head and forequarters to his wife's parents ; a leg, the tail and some fat to the married man ; and the young men had the remainder."[6]

Not infrequently etiquette prescribes that the hunter shall take the smallest, worst, or last portion,[7] and it may be that while a man feeds his own relations his wife must look to hers for support rather than to him.[8] Not only hunting but the gathering of roots, berries, etc., may be subject to similar rules. Thus, among the Shushwap, the berry picking was carried out by the whole tribe under the direction of the chief, and the collection then systematically apportioned.[9] Among the Seri every man was entitled to support in the first instance from his nearest kin but ultimately from the whole clan. It is not surprising to learn that, if persistently idle, he might be ostracized and ultimately expelled.[1]

---

[1] Morice, *Trs. Canadian Institute,* 1893, p. 28.

[2] Boaz, *R. B. E.*, 1884–5, p. 581. Among the Greenland Eskimo there is no private property in land, but no one builds at a place where people are already settled without their consent (Nansen, *Eskimo Life,* p. 109).

[3] Nansen, *loc. cit.*

[4] Boaz, *loc. cit.*

[5] Howitt, pp. 764, 767.

[6] *ib.*, p. 764.

[7] *e. g.* in S.-W. Victoria, *ib.*, p. 765.

[8] *e. g.* among the Wolgal, *ib.*, p. 764.

[9] Boaz, *B. A.*, 1890, p. 637.

So far we have seen the communal principles at work among the hunting peoples, the community being sometimes as wide as the tribe, sometimes narrowed to the clan or local group. But we also find evidence of private property among some of the lowest hunters. The most definite evidence concerns the Veddas, if it is to be taken as holding of their original condition of pure hunters and gatherers. Here Dr. and Mrs. Seligmann tell us that each little group has its own definite territory, but that within it each individual has his own ground, which is his for life and descends to his heirs. It may be alienated only with the consent of the whole group, even presents to children or sons-in-law requiring the consent of every adult male, so that what we may call eminent ownership is collective, while the individual, to apply our phraseology, is rather the life tenant.[2] Still, to this qualified extent, private property in land exists among the Veddas.

The Kauralaig, a non-agricultural people of the Western Torres Straits, also own land in severalty,[3] but the only group of hunters supplying numerous instances of individual or family property are the Australians. Here Grey,[4] who travelled over a great part of West Australia, Eyre,[5] who knew the South and West, and J. D. Lang,[6] writing of Queensland, all assert individual ownership. The subdivision does not seem to accord with the Australian habits of life, according to which we always seem to find a group, small, but larger than the simple family, roaming the country in intimate relations, and often foregathering with others in large numbers. It would be true that in parts the local group is so small as not to exceed an enlarged family, but our authors suggest a more distinct apportionment to individuals than this. Some light is thrown on the question by Howitt, who relates that, among the Yuin, when a child was born the father "pointed out some hills, lakes or rivers to the men and women then present as being the bounds of his child's country, being that where his father lived or where he himself was born and had lived. It was just the same with a girl, who had her mother's country and also that in which she was born. Besides this, the father took the country where his child was born, if away from his own locality, and the mother took that where her daughter was born under similar circumstances. . . . One of the old men of the Wolgal said that 'the place where a man is born is his country, and he always has a right to hunt over it, and all others born there had also the right to do so.'"[1]

---

[1] McGee, *R. B. E.*, xvii. 273.

[2] Seligmann, *The Veddas*, pp. 107, 111, etc.

[3] Haddon, *Cambridge Expedition*, v. 284.

[4] *Expedition*, p. 232.

[5] *Journal*, vol. ii. p. 297.

[6] *Queensland* (1861), p. 236.

This is clearly nothing like individual ownership. It is joint ownership by any and all who happen to be born in a particular district, and it is intelligible if we suppose something like the Central Australian belief in the reincarnation of ancestors to be at the back of it. Such a belief would account for certain obscure rights of private property noted by Brough Smyth as qualifying the communal tenure of which he was aware in Victoria,[2] and would explain the system described by J. Browne[3] on King George's Sound, where land was possessed by families and individuals but hunted over by the tribe (or probably the group). It was difficult, says Browne, to say in what the right of the owner consisted except that he took the lead in a fight to repel or punish trespass. We must suppose local differences in Australia, the system in some parts being clearly collective, but we shall hardly be on safe ground in accepting pure individual ownership for the rest. Howitt's account shows a possible source of misunderstanding, for any of the men whom he mentions might and, if asked, probably would have said of the land, "It is mine," while at the back of the system is a conception which is neither individual nor collective but more probably sacral. Lastly, Browne's account shows how the individual and collective might be blended in actual practice. We shall be on the safest ground in supposing some qualification of collective by private ownership in considerable tracts of Australia, and this constitutes the main exception to the rule among hunting peoples that land is the common property either of the tribe, local group, or clan.

When agriculture begins it is generally in clearings that are very small in comparison with the tribal area.[4] Moreover, the clearing is temporary. One or, perhaps, two or three crops are taken, and, the first fertility being exhausted, a new clearing is made. The right of hunting the whole area remains to the whole tribe or clan as the case may be, and though the individual family is not disturbed in the tilling and reaping of the land that it has cleared there can be no question at this stage of anything more than a possessory right, for permanent ownership is of no value.[1] Any man may occupy uncleared land or till it, or the apportionment may be made at the beginning of the season by the chiefs or council.[2] The harvest may be reaped in common and the stores apportioned to each single or joint family.[3] Where tillage is separate possession may only last for a few years[4] or during cultivation, the land, if deserted, reverting to the community.[5]

---

[1] Howitt, p. 83.

[2] Brough Smyth, vol. i. p. 144.

[3] In Dr. Petermann's *Mitteilungen*, 1856, p. 446.

[4] Thus, Schoolcraft (vol. ii. p. 188) says that the Dakotas cultivated from a quarter to two acres per family, and estimates the total area per family at 2200 acres.

---

[1] Thus, among the Dakota, planting on another's field gave no right to the crop (Schoolcraft, ii. 193). Among the Omaha each head of a household had a possessory right recognized by the tribe during cultivation, but could not sell it (Dorsey, *R. B. E.*, 1881, p. 366). Among the Brazilian peoples land is the property of the tribe, the boundaries being fixed by magical processes, but the possession of the clearings by the small or the joint family is recognized as a right (Von Martius, i. 81–83).

[2] Thus, among the Kayans, untilled land is open to any one, but once tilled it passes into private ownership and may be let (Nieuwenhuis, *Quer durch Borneo*, p. 159). Among the Sea Dyaks a man acquires title to land by clearing it. Among the Hill Dyaks only the land near the villages is private, and the plots are assigned by the tribal council so that one road serves all. The apportioned land becomes hereditary (Ling Roth, *Natives of Sarawak*, vol. i. p. 419). Among the Ainu, the chiefs are said to have seen to the distribution of land (Batchelor, p. 157). Among the Roucoyennes, large clearings round the villages are apportioned by lot (Coudreau, *Chez nos Indiens*, p. 127 seq.). Among the Creeks, the right of hunting over the tribal land was common to all, but in the neighbourhood of the village the community assigned lots to each household according to their desires and convenience (Bartram, *Trs. American Ethn. Society*, 1853, pp. 37–39). Among the Basonge Meno, each village owns a strip along the river bank, the harvest going to the families severally (*Annales*, Series iii. tome 2, p. 26). An annual apportionment of this kind is the system described in Tacitus (*Germania*, xxvi).

[3] Among the Creeks, each village had a common field divided into patches for each family, the harvest was conducted in common, and a certain portion was set aside for the common store out of which the needy were supported. Among the Iroquois, the land was the property of the tribe. The harvest was carried out by the joint family in common, and the products distributed by the women among the different departments; though the village did not make a common stock, the obligations of hospitality would prevent anybody from going short (Morgan, *Houselife*, pp. 61–66). Common cultivation and division of the harvest is also found on the Sierra Leone Coast (Post, *Afrik. Juris.* ii. 172). Sometimes the communism is of a rough and general character rather than a matter of distinct right. Among some of the Papuans, for instance, every one is expected to give when asked. "The people is God," it is irreligious to refuse anything. We see here the borderland between regular communism and the indiscriminate profusion and liberality which are such common characteristics of primitive life (Kohler, *Z. f. V. R.*, 1900, p. 369). The Karaya people tilled the land in common (Veröff. König. Mus., Bd. I. p. 28). Among the Bororo, the work on the plantations was regulated from day to day by the chief (Fric and Radin, *J. A. I.*, xxxvi. 388).

[4] This is common among the North American Indians (Kohler, *Z. f. V. R.*, 1897, p. 402).

[5] *e. g.* in many African tribes land is only appropriated while in use. On the other hand, land often becomes hereditary among the Foulah of Futajallan, among the Mandingos and the Somali, but uncultivated land falls back to the community (Post, *A. J.*, ii. 169, 170).

But as tillage develops and the cultivated land acquires a value, it tends to become permanent. The old communal rights may now be asserted by periodical redistributions.[1] Or, lastly, the redistribution may be given up, and the lots become family property, but the eminent rights of the community are still recognized—for instance, in customs regulating the methods of cultivation or forbidding alienation without its consent. These rights will also be found surviving in the common pasture, and with still greater persistence in the common woodland.

Thus private ownership arises in a very natural manner out of *de facto* occupation. The process would have been better understood and the field of controversy reduced if the original system had not been interpreted by modern analogies. We are not to think of the village in the beginnings of agriculture as owning its land collectively like a modern corporation. We are to think rather of all its members as exercising identical rights upon it. Immemorially each man has hunted and each family pitched its cabin where it pleased, and for the latter the right of temporary possession has always been regarded. A similar recognition is extended to the cultivated plot, and where many want to cultivate near together, apportionment is made. There is no difficulty, for there is plenty of land, and when all are satisfied, "superest ager." The waste and the untilled pasture remain common. It is only if population begins to press, or if the village becomes a tax-paying unit in a kingdom, that artificial means of securing fair apportionment suited to the size of the family, the contribution of each to the tax, or the capacities of

---

In the Code of Hammurabi, it would seem that leaving the land unoccupied for three years destroys the title to it as against another person who has occupied and cultivated it (clause 30). Among the Khonds, occupation seems little restricted yet it passes into ownership, for land so acquired may become an object of sale (McPherson, *Memorials of Service* in India, pp. 62, 63). Among the Navahos, we find a transition to private property with the passage from the pastoral to the agricultural state. The watering places are still theoretically common, but with private ownership of land access to them is barred (Mindeleff, *R. B. E.*, 1895-6, Part II. p. 485). Among the Washamba, all uncultivated land remains common, but cultivated land had its owner (Steinmetz, p. 267). In the mediæval manor the pasture was common after the hay was cut, and the waste common at all times. The ancient Indian village also had common pasture ground (Manu, viii. 237).

[1] As among the Yakuts (*J. A. I.*, xxxi. 74) and some of the Oraons (Howitt, *J. R. A. S.*, 1899, p. 336). Elsewhere in India, though the lots have become inalienable, the tradition of redistribution remains (Mayne, p. 112). On the other hand, in the Russian Mir, the system of periodical redistribution is, according to Kovalevsky, an innovation (*Modern Customs and Ancient Laws of Russia*, p. 93, etc.).

the plough team, will be set on foot and will take the form of periodical redistribution or of the intermixture of strips. But the eminent ownership of the community will not be forgotten. It will be expressed in the code of custom and the rules of tillage, safeguarded by a manorial court, and in the reservation of the right of the community to prevent alienation or to pronounce on the admission of a new settler.[1]

But meanwhile another tendency is at work. Land may be said to belong not to the community but to the chief. How far this is merely nominal and how far real is often difficult to tell. To the white man the ownership of the chief is as convenient as it is harmonious with its preconceived views, for the chief can be got to sell, and the establishment of his title is then a matter of practical importance. In effect, we must suppose the chief's power to have varied from that of a representative figure-head to that of administrator with restricted powers, and from this upwards to the position of a feudal lord.[2] Finally, the differentiations characteristic of material civilization appear, and we have a class of nobles owning the land and of peasant cultivators, serfs or semi-free, cultivating it.[3]

This differentiation, which is of even more fundamental importance than the transition from communal to private ownership, since it implies the formation of a class of landless dependents, hardly appears in the lowest economic grades. We find traces of it in the fishing tribes of the Pacific coast, where, for instance, among the Thlinkeets, certain clans held land of their own while others had to resort to the tribal land or wait till the owners were "through" with them for the season.[1] Among the Carriers, Chilcotin, and Western Shushwap, the ownership of the land was confined to the nobles.[2] We may compare the Guaycuru hunting tribes, which compelled the Guana to till the fields for them.[3] With these exceptions we hear hardly anything of a landed nobility till we come to the second and higher stages of agriculture. Then, when we compare our figures we find a remarkable result. The cases in which communal ownership is the preponderating custom, individuals and families being occupiers if anything, decline pretty continuously from the hunting tribes to the higher agriculture.[4] But there is no corresponding rise in cases of individual ownership, which remains nearly constant through the agricultural stages. The deficiency is made up by the increase in the cases of ownership by chief or nobles, and with this we see that the way is prepared for the class distinctions of civilization.[5] The lesson is reinforced by the growing frequency of the instances in which land is let for a consideration.[6]

---

[1] *e.g.* in early mediæval Germany (Schröder, *Lehrbuch der Deutschen Rechtsgeschichte*, pp. 207, 208).

[2] Among the Warega, land is said to belong to the villagers in common, represented by the chief (Delhain, p. 203). Among the Bahuana, Torday and Joyce tell us that land belongs nominally to the chief, but really to the community (*J. A. I.*, xxxvi. 284). So among the Singpho (Wehrli, *I. A. E.*, xvi. 34). Among the Thlinkeets, the gentile land was vested in the chief (Boaz, *B. A.*, 1889, p. 832), and among the Tolowa, Powers (pp. 65, 66) tells us that each chief inherits a portion of the coast on behalf of his band. But the chief may be the authority to whom a would-be cultivator must apply, *e.g.* among the Warundi (Buszt, p. 469) and the Bageshu (Roscoe, *J. A. I.*, xxxix. 193). Among the Yoruba, the tribal land is vested in the chief, who allots it to the householders according to their requirements, and it becomes hereditary and inalienable. Finally, the land may really be the property of the king or nobles under him, and be let out to the cultivators, for labour service or rent in kind or money—in fact, upon a feudal tenure or a leasehold system. Something like this obtains among the Somali (Paulitschke, ii. 44) and the Maguindanaos (Ausland, 1891, p. 889).

Among early civilizations ancient Egypt supplies an illustration of the cases in which all land belonged in theory to the king. In fact, it was owned in severalty, and might be farmed under contracts to pay a proportion of the harvest to the owner (Griffiths, *Papyri*, iii. 23, 156). The king had practical expression in the imposts and the corvée, and, on the other side, the duty of his representative, the nomarch, to feed the people in time of scarcity. "I gave bread to all the hungry of the Cerastes Mountain," says the nomarch Henku (5th Dynasty, Breasted, i. 126), and the boast is frequently repeated.

[3] *e.g.* among the Igorottes (Petermann, *Ergbd*, 1882, p. 31) and the Tscherkessen (Bodenstett, p. 204).

But while the communism of the village gradually wastes away, there is also a communism on a smaller scale which forms the economic basis of the joint family. The joint family consists of a whole group of relations connected by father-right or mother-right, as the case may be; the property of this group is generally administered by the head, but is owned and its produce shared by all in common.[1] It is in strictness indivisible and inalienable It can neither be sold, given away nor bequeathed. But within this communistic scheme we find private property arising in a variety of forms in very different degrees. Thus, individual members may acquire a *peculium* on certain conditions. For example, the daughter, who is allowed to retain the savings of her industry and take them away with her on marriage as her dowry.[2] Again, the joint family may break up into separate families; alienation may be allowed under varying restrictions;[3] or, finally, the house-father may acquire so much predominance that the common rights are merged in him.[4]

---

[1] Swanton, *R. B. E.*, vol. xxvi. p. 425.

[2] Morice, *Trs. Canadian Institute*, p. 28. Other families might hunt the land by permission (id. *Proc. Can. Inst.* vii. 125). Among the Western Shushwap the nobles collected rents from the commons and fined and drove them off for trespass. Among the Eastern Shushwap land was tribal property (Teit, *Jesup Exped.*, ii. 572, 573).

[3] Serra, *Riv. Trimensal*, 2nd Series, vii. 206 ff.

[4] The main exception is that, owing to the ambiguity of the Australian evidence, there are more clear cases of common ownership among the Higher than the Lower Hunters.

[5] *Simpler Peoples*, p. 251. The development among the Pastoral peoples is less regular, but among the Higher Pastoralists the ownership of chief or nobles appears in a large proportion of the few cases which are known.

[6] For one or two cases among fishing tribes, see above, note 2. The loaning of land in return for the first year's profits was common in the Eastern Torres Straits, and occurred occasionally among the less advanced people of the Western islands (Haddon, *Cambridge Expedition*, vol. iv. p. 147, and vol. vi. p. 165).

The communal system was from the first compatible with inequality, for one family would be stronger and more numerous than another, and as soon as accumulation began and the practice of destroying the property of the dead gave way, inequalities would be cumulative in their effect. Redistribution, or the simple liberality of private manners,[1] will merely be occasional and clumsy brakes upon a prevailing tendency. The clamour for *γῆς ἀναδασμός*, of which we hear so often in Greek history, was more an assertion of old quasi-communistic ideas than of revolutionary innovation. The communal disposition of lands acquired by conquest offered the Romans repeated opportunities of counteracting the monopoly of ownership by the rich, and from the Licinian Rogations to the Gracchan revolution, and from the Gracchi to the settlement of the veterans after the civil war, was the focal point of social convulsion and political revolution. Given private property and inheritance, there is no difficulty in accounting for inequality. The difficulty which every civilization has had to face, and our own most of all, is that of stemming the tide. But how the inequality of shareholders in a village was transformed into the relationship of lord and vassal is a more difficult question, and the answer is probably different in different cases. Political and fiscal causes co-operated with the industrial factor. The rich man might become a chief, or the chief, primarily indistinguishable in mode of life from his followers as we so often find him, might become a rich man. In the pastoral stage in particular, flocks and herds might be accumulated to great size, while a pest or a drought might reduce individuals to the status of proletarians. When villages grew into kingdoms or were subordinated to a conquering clan, governors were appointed to be responsible for order and taxes, and these might either be the old headmen, whose position would thus undergo a great change, or followers of the conqueror, or other members of the ruling race. The new ruler would have lands apportioned him for maintenance, and labour service secured to him that he might be free to maintain his dignity and perform his public functions. By some such steps as these the Teutonic village seems to have grown into the mediæval manor, in which every man, lord and vassal alike, holds his property not absolutely but subject to the performance of customary service. The commutation of personal service for rent brought the mass of the English cultivators to the most favourable position that they have ever enjoyed, but it was a precarious and, as it proved, fleeting prosperity. For the indefiniteness of unwritten custom left them at the mercy of the lord when it became his interest to enclose, and the transformation to absolute ownership by the minority meant the total loss of ownership by the greater number. The social question in England which the Industrial Revolution must in any case have raised in an acute form, was rendered almost desperate by the contemporary dispossession of the peasant cultivator, and the first half of the nineteenth century found the mass of the English people at the lowest depth of economic depression.

---

[1] The position of the head of the family gives rise to much the same questions as that of the chief in the tribe. How far is the ownership (*a*) nominal, (*b*) effective in certain distinct rights of administration, (*c*) absolute. As contrasted cases we may put side by side the Baquereue, where the family chief is said to administer the common goods (Hurel, *Anthropos*, vi. 285); and the Negritos of Zambales, where he can sell or otherwise dispose of the family planting ground (Reed, p. 43).

[2] This appears to be the only form of private property in the Russian joint family down to the present day (Kovalevsky, *Modern Customs*, p. 59). Among the Kurds of Eriwan, the wife's dowry is the only property held distinct from that of the family (von Steinen, p. 227).

[3] A strong case is the Hebrew Law of Jubilee by which all land reverted to its original owners at the end of fifty years; this in effect provided that family property should not be permanently alienable. The proprietary rights of the tribe are also maintained in the priestly code by the rule prohibiting daughters who, failing sons, have inherited property, to marry out of the tribe (Numbers xxxvi.). More commonly a right of re-purchase remains where alienation has been allowed. The French right of *retrait lignager* was not finally abolished till 1790 (Viollet, p. 563).

[4] In early Rome the family property was conjoint, but the system was much modified by the power of the Roman paterfamilias and also by the right of the heirs to demand partition at the death of the father. There was also probably a wider primitive community of land as between possibly the whole people or more probably the gens (Girard, p. 249).

For the varying positions of the father in the Indian household, see J. D. Mayne, *Hindu Law and Usage*, p. 222 ff. Mayne makes the distinction between the patriarchal and the joint family turn on the question whether on the death of the eldest ascendant the family do or do not remain together (p. 223). He points out that under the patriarchate all acquired property fell to the father. In this stage the head of the household acquires private property indeed, but at the expense of all the rest.

In early Greece, land was the common property either of the community or of the tribe or gens. Common ownership would seem to have survived in the hills and woodland, and in respect to mineral rights. Private land was at Sparta inalienable and therefore really the property of the family, and in Attica alienable but subject to closely defined laws of inheritance, and to supervision by the law as against waste. The division was accomplished by the middle of the seventh century in Attica. But it must be remembered that there was everywhere in Greece a race of original cultivators, who either became helots or more or less dependent on the new lords (Wilamowitz-Möllendorf, 61, 62, 82).

---

[1] Among the Roucoyennes no one has any difficulty in finding sustenance on the land of another family while his own clearing is getting ready (Coudreau, *op. cit.* 241), and in British Guiana a village whose crops fail lodges itself upon another (im Thurn, *op. cit.* p. 253).

Meanwhile, land has long ceased to be the only important means of production. From the beginnings of pasture, and with the application of animal power in agriculture and transport, stock became an important factor in wealth. The rise of industry, commerce, and the consequent formation of towns established classes of artisans and merchants, who gradually abandoned the cultivation of land and lived by manufacture and exchange. Capital lent itself more readily to absolute ownership, exchange, and free bequest than land, and capital, which becomes more and more a mere paper lien on the industry of others, occupies the larger share in the economic life of the advanced community. It is in the accumulation and use of capital that absolute ownership displays its full power, and that the contrasts of gigantic accumulation and utter destitution are most dramatically displayed. Speaking very roughly, we may say that humanity has hitherto known three stages of economic development. In the first, the fruits of the earth are open to all to gather. There is general poverty, but also general opportunity. In the second, labour, like all social life, is more organized, men have their status of master or slave, lord or vassal, superior or dependent. There is discipline but not freedom. In the third, while the individual is free to make his own career within the limits of the social order, it falls out through the working of competition and the cumulative factor of inheritance, that there are those who have a lien on the fruits of earth in the industry of others, and those—and they are the majority—who have none. The man of property and the man of none are the contrasted figures of modern civilization, and their reconciliation a problem which becomes more urgent as industrialism advances.

2. Private property, held in absolute ownership, produces a basis for the free exchange of goods, and from the exchange of goods arise commerce, the division of labour and free industrial enterprise. In its early stages society seems to know exchange

first in the form of Gifts. A makes a present to B and expects B in due season to make an adequate return. Quite an elaborate traffic may develop on this basis as has recently been shown by Dr. Malinowski in his "Argonauts of the Western Pacific," and in a modified form it is the method of the "Silent Trade." Becoming more commercial it takes the form of barter. Barter may be effected by the handing over of both objects simultaneously, but if it is to become a normal part of the economy it is necessary to rely on promises, and thus exchange generates contract. But the conception of a binding contract is not reached at a stroke. There are early laws which recognize no contractual undertaking at all as binding for the future.[1] They know only those which are completed immediately on both sides, like a sale or an exchange of goods. It is a step onwards when a form is prescribed, the fulfilment of which makes the contract binding.[2] But still it is the legal form rather than the ethical element, the promise, which has force.

> "That which the law arms with its sanctions is not a promise, but a promise accompanied with solemn ceremonial. Not only are the formalities of equal importance with the promise itself, but they are, if anything, of greater importance. . . . No pledge is enforced if a single form be omitted or misplaced, but, on the other hand, if the forms can be shown to have been accurately proceeded with, it is of no avail to plead that the promise was made under duress or deception. The transmutation of this ancient view into the familiar notion of a Contract is plainly seen in the history of jurisprudence. First, one or two steps in the ceremonial are dispensed with; then the others are simplified or permitted to be neglected on certain conditions; lastly, a few specific contracts are separated from the rest and allowed to be entered into without form, the selected contracts being those on which the activity and energy of social intercourse depend. Slowly, but most distinctly, the mental engagement isolates itself amid the technicalities, and gradually becomes the sole ingredient on which the interest of the jurisconsult is concentrated. . . . Forms are thenceforward only retained so far as

---

[1] See Schröder (p. 63) for the Primitive Germans "wie alle Naturvölker." Post, *Grundriss*, vol. ii. p. 617 seq. Girard, *Manuel*, p. 417, on early Roman Law: "Nuda pactio obligationem non parit."

[2] For the form of the Roman Nexum, see Maine, *Ancient Law*, p. 320. The oath or the ordeal are common forms; for instances, see Post, *loc.cit.* A more substantial guarantee is the requirement of a deposit as among the Chinese (*ib.*, p. 619).

they are guarantees of authenticity and securities for caution and deliberation." [1]

Once recognized as fully binding in morals and law, the importance of contract as an element in social life increases with every step forward in civilization. At the outset its scope is narrowly limited by the social structure. As long as the old grouping remains by which a man has a fixed place as member of a clan, a joint family, a village community, he is scarcely free to enter into obligations upon his own account. He cannot bind himself without binding others, and so obligations must be entered into, if at all, between communities rather than individuals. Hence the part played by voluntary contract in life is insignificant. Again, in the earlier civilizations, rules of caste, or the inherited obligations of feudal tenure, fix each man's place and function, and greatly curtail his opportunities for entering into voluntary relations with other men. As these barriers, one after another, break down, there arises a new mobility in the social world. Instead of fellow-clansmen, or lord and vassal, bound to each other by hereditary and unalterable ties, we have merely fellow-citizens, who have no special ties but those which they form for themselves, who come together for mutual aid and, if not pleased with each other, can separate again. The old solid structure of society, in which each atom was definitely bound to its neighbours, has deliquesced into a mass of freely-moving molecules. The process is completed in the modern world by the comparative ease with which the last barrier — that of the state frontier — is overleapt. Capital migrates with perfect freedom, human beings almost as easily in proportion as alien laws have ceased to be oppressive, and the same broad civic rights are recognized in all the advanced nations. In the new structure of society it is more and more true that the whole world is open to the individual, though it is also true that he is in a sense alone in its vastness.

3. Free contract and private property are the foundations of civilized economics, but they bring their own problems in their

---

[1] Maine, *Ancient Law*, p. 313.

For stages in the development from the nexum to the consensual contract, see Maine, *op. cit.*, p. 338. Maine points out that the moral element first enters decisively into the Real Contract where part performance or one-sided performance imposes the duty of fulfilment. Several civilized peoples recognize a right of one-sided retractation, at any rate within a certain limit of time. Thus Manu, viii. sections 222, 223. According to Post (*loc. cit.*) the law of Islam originally gave a right of retractation holding until the parties had separated. The ancient Babylonian seller could re-purchase by repayment with interest, and his family had a similar right (*ib.*).

train. At once the cause and effect of the breakdown of the old social groupings, the accumulations of wealth which they render possible bring about new divisions, new contrasts, new antagonisms. On this side, in all the more virile races their work has been combated stoutly, if not always wisely, by the best citizens and often by the religious leaders. The old communal rights are furbished up anew, as in the Sabbatical year and the later year of Jubilee. The prophets thunder against those who grind the face of the poor. Exactions threatening serious diminution of the roll of citizens are met by the abolition of debt slavery, by a general cancelling of debts, perhaps by a division of lands. In particular, usury is denounced as unnatural by the philosopher or as wicked by the prophet. Religion consecrates poverty, or inspires attempts at a deliberate communism. Yet, after all, antiquity has handed on the problem unsolved to the modern world, and not only unsolved but replete with difficulties more formidable in proportion as the emancipation of the individual is more complete and the forces at the command of industrial, commercial or financial genius immeasurably greater than at any previous epoch. The sense of these difficulties has deeply affected modern legislation. There are few countries in which contracts in industrial matters are left wholly unregulated. In England in particular, we have a vast mass of industrial legislation, dating back at least to the Factory Act of 1802, restricting in numerous directions the agreements which may be made between employer and employed. In quite a similar spirit agrarian legislation has often restricted freedom of bargaining as between landlord and tenant. Yet the defenders of such legislation are by no means compelled to disparage freedom of contract. They may perfectly recognize that for individuals to have the power of entering into obligations without restraint arising from their birth or status is one of the leading differentiæ of the higher civilization. But they can point out that in this relation freedom has a somewhat ambiguous meaning. The starving man may be free by the law of the land, but is not free by the law of the facts to reject the only bargain which enables him to obtain food. A contract is, in fact, never altogether free unless the parties to it are fairly on terms of equality, and they are not on terms of equality if the consequences of rejecting the bargain will be vastly more serious to the one than to the other. When economic conditions destroy this balance of equality it is held that the principle underlying free contract is rather maintained than disturbed by state regulations prohibiting contracts that are proved to be injurious to one of the parties. Thus, though—or let us rather say precisely because—"contract" is the basis of the modern social order, the character of contracts is a matter to which the state cannot and does not remain indifferent. If this analysis is correct, modern industrial legislation does not reject free contract as an exploded principle, but is rather seeking to get beneath the surface of the terms to the point where freedom is really to be found: and in this effort the conception of free contract, it would appear, must undergo a certain reconstruction.

Something similar seems to have occurred in the attitude of legislation to the idea of private property. It is difficult to speak with certainty on a question where all the principles involved are matters of contention between rival parties, but, judging as far as possible from the trend of actual legislation alone, certain results emerge. In the first place, the modern state is committed to a wider conception of its functions than that of maintaining order or defending itself against aggression. In various directions it takes active measures for the promotion of common objects which experience has shown to be unattainable by individual effort. Of these objects some, like state education, touch the interests of the poor more directly than those of the rich, while others, like the provision for the maintenance of the indigent, avowedly benefit the poor alone. Yet it has to be recognized that if the cost of these objects were thrown by taxation on the poorer classes they would largely defeat their own purpose, by intensifying the poverty which they are intended to relieve. Modern legislation, therefore, cannot wholly escape the criticism that it tends to throw upon the wealthy the cost of measures which primarily benefit the poor. Now, to the strict upholder of the absolute right of private property all such legislation must appear iniquitous. To him the right of the individual against the state stands on just the same footing as his right against any other individual. The right of the state to levy taxes for its own needs is, indeed, necessarily admitted, but this taxation is regarded as a kind of exaction imposed by the established authority and justified only by the needs of social order and national defence. Any tampering with the possessions of one class for the benefit principally of another is mere spoliation. The defenders of the present trend of economic legislation, if they take any higher ground than that of temporary expediency, are forced in effect to question this absoluteness of private rights. Without necessarily being committed to any socialistic scheme of economic organization, they maintain that the rights of property rest upon the goodwill of society, which provides and pays for the forces necessary to maintain them and which may modify and at times has modified them in important particulars (*e. g.* in relation to inheritance and bequest). They urge, further, on economic grounds that there is a social element in value—the growth of society, its good order, the industries and exchanges which it facilitates, actually creating some kinds of wealth (*e. g.* much of the value of urban sites and of municipal monopolies), and entering as a factor into others. Even such a factor in production as good workmanship is in part attributable to the social order. The numerous intelligent, highly skilled and steady workmen whom a modern engineer can count upon finding ready to his hand put him into a very different position to that of Watt or even Stephenson. The existence of such a class is due to complex causes, but in large measure it is attributable to the great social reforms of the intervening period, and the wealth that the class of skilled artisans create, whether it takes the form of profits to the employer or wages for themselves, has its root in social conditions which created them and were not created by them. To put it more generally, the maintenance of good social order is the condition of developed industry, and therefore of the wealth arising from it.

Now those who emphasize these social factors in value are led to question the absoluteness of the rights of private property when urged against the state, and to contend that they should be viewed rather in relation to the social organization as a whole and defined in accordance with its needs. In this organization the individual has his place as a responsible agent, whose duty it is to do useful work and whose right it is to receive such reward as will call forth and serve to maintain his energies at their best. Society on its side has the duty of maintaining and improving the social order, and assuring to all its members the opportunity of finding their places within that order. That it may perform this duty, it has the corresponding right to a share in the wealth which it helps to create, and it does not go beyond its share as long as it leaves to energy, talent and initiative, devoted to useful ends, full scope for occupation and the stimulus of adequate reward. Such, in briefest outline, seems to be the principle underlying much of modern legislation—a principle which, it will be seen, implies a certain reconstruction of the conception of property, just as we saw above that other legislative tendencies compelled a reconstruction in the conception of contract.

4. With the growth of property and the development of trade is closely bound up the question of the treatment of those who

are submerged in the process. But this opens the wider ethical question of the whole attitude of society to the helpless, the suffering and the dependent. In this relation we shall have to admit that the development of personal responsibility as shown in the growth of private property and of contract has its hardening side. The brightest aspect of primitive life is seen in its freedom of giving, its expansive and often chivalrous hospitality, induced partly by the sense of a common necessity, but certainly facilitated by communal living. In the whole department of conduct which concerns the treatment of the helpless, whether it be the aged or the infirm, the child or the stranger, the divergence of the primitive from the civilized point of view both for good and for evil is strongly marked. We have the key to the difference if we keep always in mind, on the one hand, that primitive ethics knows nothing of those rights inherent in personality upon which the civilized order is founded, but that, on the other hand, through the very absence of individual responsibility the movements of pity have free play, while, through the prevalence of family and village communism, they have a simple and natural means ready to hand for the relief of indigence.

Both points appear in the treatment of the stranger. As such he is rightless. He belongs to no clan, and it is therefore nobody's business to avenge him if robbed or slain. He must find a protector if he would be safe. Yet if he once enters into the bonds of hospitality he is sacred.[1] Thus the stranger found outside a Red Indian camp might be treated as an enemy,[2] but once admitted as a guest he is sure of a hospitable reception. The communal living in the joint household accustomed the Indian to the habit of readily sharing what he had with those who needed it.[3] The Indian, says Morgan, "would surrender his dinner to feed the hungry, vacate his bed to refresh the weary, and give up his apparel to clothe the naked."[1] To such men the cold exclusiveness of the civilized man's house is equally astonishing and repulsive. "You know our practice," said Canassatego, an eighteenth-century Ononadaga chief, to a white man, in a striking allocution which Morgan quotes. "If a white man . . . enters one of our cabins we all treat him as I do you. We dry him if he is wet, we warm him if he is cold, and give him meat and drink that he may allay his hunger and thirst; and we spread soft furs for him to rest and sleep on. We demand nothing in return. But if I go into a white man's house at Albany and ask for victuals and drink, they say, 'Where is your money?' And if I have none, they say, 'Get out, you Indian dog!'"[2] Every one knows of the hospitality of the primitive Arab, and how a sheikh would give away his last camel, or slay his favourite horse, for a guest's benefit.[3] Often the stranger has a mysterious sanctity. The hospitable host, like Abraham, may find himself entertaining angels unawares. The wanderer comes, as in early Greece, from Zeus. "Do not treat strangers slightingly" is an Ainu saying, "for you never know whom you are entertaining."[4] A custom which alone makes possible any movement outside the boundaries of the tribe in the primitive world may well acquire a religious sanction.[5]

---

[1] In a paper read before the Sociological Society, Dr. Westermarck has advanced strong reasons for the suggestion that magical conceptions have much to do with primitive hospitality. The guest is in a measure feared as a mysterious stranger. Outside the house he can do no harm, but once in contact with the property or the person of his host he may on magical principles be most dangerous. Hence at once a reason for the distinction made between his treatment inside and outside the dwelling-place, and for the importance of the ceremonial of contact whereby he acquires the right to hospitable entertainment. In the same way Dr. Westermarck refers the divine protection of the beggar to a humble origin in the fear of the beggar's malediction. At the same time such explanations, however true in themselves, do not settle the question how far such fears are the expression in a form congruous to primitive thought of an ethical feeling that something is due to the suffering and the helpless.

[2] See Waitz, iii. 166.

[3] Morgan, *Houselife*, p. 61.

Mother's love is the foundation of human social life, and we are therefore prepared to find that affection and care for children by one parent, if not by both, is traceable to the lowest levels of humanity. But the legal position of the child is not the same in primitive society as with us. The "right to live" is a consequence of the ethics of personality and is not recognized by the savage, nor, if it were recognized, would infanticide, being an action committed within the family circle, necessarily attract the attention of any authority outside the family group. To primitive man having a severe struggle for existence the advent of a new mouth to feed is often a serious matter. Hence infanticide is a not uncommon practice in the uncivilized world, and coincides with genuine and even devoted attachment to the child if once allowed to live.[1] If the father takes up the child,[2] if the clan decides that it is to be preserved, even,[3] it may be, if it has once taken food, its life is secure. It will be carefully tended, and often savage, like civilized, parents will go without food rather than let the child go hungry. Even orphans are among many people looked after.[4] The restriction of infanticide to the weak and ill-formed marks the decay of the practice.[5]

---

[1] Morgan, *League of the Iroquois*, p. 328. Similarly, Catlin (vol. i. p. 230) points out that the dog, though immensely valued, is sacrificed for a guest, if there is no other way of providing for him. Coldan (in Schoolcraft-Drake, vol. i. p. 221) remarks that the Iroquois carried hospitality beyond the bounds of "Christian civility"—a delicate way of referring to wife-lending.

[2] Morgan, *The Iroquois*, p. 329.

[3] See Palmer, *Koran*, Introduction, p. x.

[4] Batchelor, p. 114.

[5] I have referred above (chap. vi. 236) to the extreme case of hospitality to enemies among the Bengalese hill men.

Lastly, in their treatment of the sick and aged, uncivilized peoples differ greatly. Many are said to take great care of them. Others get a bad character from travellers. In many instances the helpless are abandoned, and in some they are, perhaps at their own request, put to a more merciful death.[6]

---

[1] A number of savage and barbarous peoples *not* practising infanticide—with special reference to female infanticide—are mentioned in Westermarck's *Human Marriage*, p. 311.

There is no doubt that some earlier writers immensely exaggerated the practice. In the *Simpler Peoples* we did not seek to obtain negative instances, which are generally difficult to establish, but confined ourselves to enumerating the cases in which the practice is alleged, and reducing them to a proportion of the whole number for whose marriage and family life we had information. Except among the Hunters we found infanticide alleged, roughly speaking, in one case in eighteen only. Among thirty-nine Pastoral peoples there was only one case, a fact which should be compared with the similar record of these peoples for cannibalism and human sacrifice. Among the Lower Hunters the proportion rises nearly to one in four, chiefly owing to the prevalence of the custom in Australia. It is, however, quite intelligible that the practice should be commonest where the struggle for life is most severe (p. 242).

[2] Thus the Roman father was said *tollere* or *suscipere liberos*. So, too, the German father, but here the right of putting the new-born child to death belonged to other persons as well, especially the mother and grandmother. In the Frisian laws it is allowed to the mother only (Schröder, p. 67).

[3] Among the Creeks infanticide required the consent of both the clan and the parents (Schoolcraft, vol. v. p. 272). At Sparta it was a tribal matter. The elders of the phyle examined the child to decide if it were well formed, and if not it was exposed on Mount Taygetus (Busolt, p. 109).

[4] Among some South American Indians the chief is the guardian of bastards and orphans (Schmidt, *Z. f. V.* 1898, p. 289). Occasional notices of orphans suggest that the care which they receive is inadequate (cf. Schoolcraft, vol. ii. p. 194, The Dakotas; Waitz, vol. iii. p. 342, Indians of Oregon).

[5] The opposite sentiment is expressed in a remarkable manner by a Toda woman. "We never kill boys. As for girls, it is different; but still we only kill the sturdy and strong; it would be a sin to lay hands on the weakly and deformed" (Reclus, p. 198). Female infanticide has greatly diminished among the Todas (Rivers, *The Todas*, p. 478, etc.).

[6] The Andamanese are said to take the greatest care of the sick and helpless (Man, *J. A. I.*, 12, 82), and so are the Central Australians. Among the North American Indians the aged are said to be generally respected yet are often left behind in necessity or put to death (Waitz, vol. iii. p. 115). That this is not quite so inhuman as appears to us is made clear by the narrative of Catlin in the text. The Oregon Indians are said to take good care of the aged, but the sick are often neglected (Waitz,

This is not altogether due to inhumanity. The savage, especially the nomad, cannot with the best will in the world provide for the aged as we could if we desired to do so. Catlin saw an old man left behind with tent and fire, but no weapon, while the tribe marched off. The old man himself bade them leave him. "You should all go, where you can get meat. My days are nearly all numbered, and I am a burden to my children. I cannot go, and I wish to die. Keep your heart stout and think not of me. I am no longer good for anything." With these words the ceremony of abandonment was completed, and it was certainly not wanting in dignity or pathos.[1]

5. In the earlier civilizations the solidarity of the family, cemented and extended as it often was by the development of ancestor worship, secured good treatment of the infirm and aged parent within the kindred. Towards the poor and helpless generally the Oriental civilizations teach the beauty and virtue of beneficence and consideration. This is strongly marked in ancient Egypt. The soul before the Judgment Seat winds up its repudiation of sins by claiming positive merit. "I have given bread to the hungry man, and water to the thirsty man, and apparel to the naked man, and a boat to the shipwrecked mariner."[2] The inscriptions on the tombs of kings and nobles

---

vol. iii. pp. 342–346, and Schoolcraft, vol. v. p. 654). Among the Winnebagoes the aged and infirm sometimes suffered in seasons of scarcity, but they were helped by friends and relations, and the chief sometimes requested the U.S. Government to give such persons an extra share of the tribal annuity (Schoolcraft, vol. iv. p. 56). The Wintuns of California are said to be rather neglectful than otherwise of the sick and aged, and the mild statement is illustrated by the case of infirm people crawling to the river-side and being allowed to fall in and drown (Powers, p. 231). Among the Iroquois a reform is recorded by Morgan. The aged were formerly exposed, but after the formation of the League and of permanent villages were well cared for (*League of the Iroquois*, p. 171). Among the Apaches and the Western Eskimo death is felt to be the best lot for the aged. The Eskimo believes he will be born again young and vigorous (Reclus, pp. 103 and 132). The practice of leaving the sick and aged to their fate or even putting them to death is widely diffused in Africa, but there are exceptions, *e.g.* the Mandingoes, and possibly the Kafirs (though this is denied by Waitz, vol. ii. p. 340). The custom is said to be recently extinct in Southern Nubia (Post, *Afrik. Juris.*, vol. i. p. 298).

[1] Catlin, vol. i. p. 216. Whatever provision there may be for the aged and infirm it is, as we might suppose, mainly a matter of the goodwill of the family or clan. It is seldom in the savage world that we read of any regular public provision. The Creeks are an exception, who are described as having public "hot houses" provided in which poor old men and women suffering from want of clothes may sleep (Caleb Swan, in Schoolcraft, vol. v. p. 265).

[2] *Book of the Dead*, chap. cxxv., Budge's Tr., vol. ii. p. 372.

lay stress on their goodness to the poor. They claim to be "the staff of support to the aged, the foster-father of the children, the counsellor of the unfortunate, the refuge in which those who suffer from the cold in Thebes may warm themselves, the bread of the afflicted which never failed in the city of the South." Ameny, a ruler of the nome of the Gazelle in the days of the 12th Dynasty, gives himself the best of characters as a good master and lord—

> "I have caused no child of tender age to mourn; I have despoiled no widow; I have driven away no tiller of the soil; I have taken no workmen away from their foreman for the public works; none have been unfortunate about me, nor starving in my time. When years of scarcity arose, as I had cultivated all the lands of the nome of the Gazelle to its northern and southern boundaries, causing its inhabitants to live, and creating provisions, none who were hungry were found there, for I gave to the widow as well as to the woman who had a husband, and I made no distinction between high and low in all that I gave. If, on the contrary, there were high Niles, the possessors of the land became rich in all things, for I did not raise the rate of the tax upon the fields."[1]

To our ears it may seem that the gentleman protests too much, and possibly he succeeds in giving us a more vivid picture of what the feudal lords of Egypt did than of what they refrained from doing, but at least he makes the ideal standard of conduct for the Egyptian ruler clear enough.

Hospitality is still recognized as a virtue. Sinuhit, who fled to the Edomite desert, describes his life there—

> "When a traveller went and returned from the interior, he turned aside from his road to visit me, for I rendered services to all the world. I gave water to the thirsty, I set on his journey the traveller who had been hindered from passing by, I chastised the brigand."[2]

On the other hand, in the Maxims of Ani of the New Kingdom we see the civilized man's fear of the beggar growing up. "Let not your hand be despoiled for the man whom you do not know. He came to you for your ruin." And again, "Let your eye be open in fear lest you become a beggar."[3]

---

[1] Maspero, p. 338. Erman, pp. 93, 94. The translation varies slightly. For similar claims to have fed the hungry, etc., cf. Breasted, *Records*, i. 126, 151, 162, 171, etc. It was clearly the recognized duty of the nomarch (cf. p. 339, note 4).

[2] Sayce, *Records of the Past*, vol. ii. p. 23.

[3] Amélineau, trans. §§ xviii. and xxi.

Yet the Maxims preach hospitality with a touch of the later familiar gnomic sentiment—the suggestion that moderation in prosperity is a kind of surety against the changes of fortune—

> "Eat not bread while another standeth by, and thou placest not thy hand on the bread for him. The one is rich, and the other is poor, and bread remaineth with him who is open-handed. He who was prosperous last year, even in this may be a vagrant."[1]

We meet with fewer passages of this tendency in Babylonish literature. But it appears from the Incantation Tables that failure in duty to the helpless, and especially the dependent, and churlishness in refusing a request, might bring a curse upon a man.[2]

Respect for the aged is a part of the corner-stone of Chinese ethics, the duty of filial obedience. But further, benevolence generally, and the duty of the governor to the governed, are important parts of the ethical teaching. "Benevolence," says Mencius, "is the most honourable dignity conferred by Heaven," and the classical writings are full of our duties to our neighbours, and of the rulers to the mass of the people. "When sovereigns appointed inspectors," says a passage in the *Shoo-King*, "they . . . said to them, 'Do not give way to violence or oppression; and go on to show reverence for the weak and find connections for destitute women.'"[3] Corn was left, as among the Hebrews, for the widows who came to glean.

> "There shall be young grain unreaped
> And here some sheaves ungathered,
> There shall be handfuls left on the ground,
> And here ears untouched
> For the benefit of the widow."[4]

Public assistance for the aged and infirm was organized by the Emperor Tai Tsung (A.D. 627–649). Foundling hospitals were also established, and under the Ming Dynasty, Hung Wu again took up the question of the aged and infirm. Almshouses and granaries for the relief of famine are also maintained.[5] The slow disintegration of the communal life has gradually forced the higher authorities to deal with the problem of the indigent.

---

[1] Griffith, *World's Literature*, 5341. To somewhat similar effect, though in obscure language, Amélineau, § xxvi.: "It is God who is the giver—therefore have pity and feed the hungry."

[2] For the text, see below, Part II. chap. ii.

[3] *Shoo-King* (Tr. Legge, Part V. xi. 3).

[4] *She-King*, vol. ii. part ii. book vi. ode 8. Legge's *Prolegomena*, p. 150.

[5] Laffitte, *Chinese Civilization*, pp. 53, 58.

In India, almsgiving was recognized as an act of merit from the Vedic period onwards.

"The prosperity of the liberal man never decays; while the illiberal finds no comforter. He is the bountiful man who gives to the lean beggar who comes to him craving for food. Success attends that man in the sacrifice, and he secures for himself a friend in the future. He who keeps his food to himself has his sin to himself."[1]

Similarly, the Upanishads teach that "there are three branches of law. Sacrifice, study and charity are the first."[2] And again: "The divine voice of thunder repeats the same, Da, Da, Da, that is, Be subdued, Give, Be merciful. Therefore let that triad be taught, Subduing, Giving and Mercy."[3]

In Manu the obligation of hospitality is peremptory.

"A guest who is sent by the (setting) sun in the evening, must not be driven away by a householder; whether he have come at (supper-time) or at an inopportune moment, he must not stay in the house without entertainment.

"Let him not eat any (dainty) food which he does not offer to his guest."[4]

But it is due in its fulness to caste-fellows alone. Towards members of a lower caste it is optional.[5] To share one's good things is a matter of positive duty. To eat first without feeding infants, the sick and others, will cause a man to be devoured by dogs and vultures after death.[6] But no great self-sacrifice is expected.

"A householder must give (as much food) as he is able (to spare) to those who do not cook for themselves, and to all beings one must distribute (food) without detriment (to one's own interest)."[7]

The plucking of food by the wayside is allowed to the higher castes.[8] Finally, in one passage we trace a higher social conception. The Sudra is naturally a slave, but even as a slave he ought to have his due maintenance.[9]

---

[1] Muir, *Sanscrit Texts*, vol. v. p. 431.

[2] *The Upanishads*, Tr. M. Müller, vol. i. p. 35.

[3] Müller, *Upanishads*, Part II. p. 190.

[4] Manu, iii. 105, 106.

[5] Apastamba is more modern. "If a Sudra comes as a guest (to a Brahmana), he shall give him some work to do. He may feed him after" (*Sacred Books*, vol. ii. p. 110).

[6] Cf. Baudh., ii. 3, 5, 17. "He shall never eat without having given away (some small portion of the food)."

[7] Manu, iv. 32.

[8] *ib.*, viii. 341.

[9] *ib.*, x. 124, 125.

Hebrew legislation dealt with the problem of poverty both with a view to prevention and to cure. We know with what wonderful power the prophets denounced the oppressors of the poor and declaimed woe upon those who joined house to house and field to field. The resistance to that tendency to the depression of the poorer citizens, which accompanies economic progress, was the main burden of social morality as preached by the prophets, and took practical shape in legislation in the form of the limitation of debt slavery; release of debts, according to Deuteronomy in the seventh year,[1] and according to the later code in the fiftieth; the prohibition of usury;[2] and the insistence on equal justice between the stranger and the fatherless. Deuteronomy adds that the debtor is to fetch his own pledge from his house, to have his pledged garment restored to him at nightfall, and that neither a millstone nor a widow's raiment is to be taken. These were measures designed to prevent Israelites from falling out of the class of free men. There were, besides, the practical provisions for the relief of the poor. These were probably developed from common festivals of the clan, where every one had a right to claim a portion.[3] For this purpose the Book of the Covenant makes use of the Sabbatical year, in which the land was to rest that the poor might eat. But they would not eat very much from the fruits of fallow land, and so Deuteronomy prescribes that a tithe of every third year's produce shall be shared with the stranger, the fatherless and the widow. It also insists that the gleanings of the field and the vineyards be left to them.[4] The duty of almsgiving was rigidly enforced. "He who gave less than a tenth of his means was a man of evil eye."[5] There were collections in the synagogues for the poor and the strangers, and there were elected almoners. Lastly, honour for the aged and regard for the afflicted are insisted upon as moral and religious duties.

---

[1] Deuteronomy xv. 1. Verse 8 says in rather futile fashion that this is not to deter the Hebrew from lending to his brother, but it does not say what is to compel him. Note that by verse 3 the law does not apply to foreigners.

[2] This appears already in the Book of the Covenant, Exod. xxii. 25, and the next verse insists that the neighbour's raiment when taken as a pledge is to be restored at sundown. Usury is uniformly allowed against the foreigner (Deut. xxiii. 20).

[3] Robertson Smith, *Religion of the Semites*, p. 250.

[4] Deuteronomy xiv. 28, and xxiv. 19–21. In the priestly code it would seem, however, that the tithe goes to the Levites, and it is re-enacted that the "Sabbath of the land . . . shall be food for thee . . . thy servant . . . and thy stranger" (Lev. xxv. 6).

[5] Maimonides, quoted by Loch, art. "Charity and Charities," *Ency. Brit.*, ed. x., p. 667. Loch adds that even the poor had to give alms, and a refusal was punished with stripes by the Sanhedrim.

In the law of Islam also almsgiving is insisted upon as one of the five practical duties of the creed. Usury is forbidden, and pronounced by the Prophet as being as accursed as almsgiving is blest.

> "Those who devour usury shall not rise again, save as he riseth whom Satan hath paralyzed with a touch; and that is because they say 'selling is only like usury,' but God has made selling lawful and usury unlawful. God shall blot out usury, but shall make almsgiving profitable, for God loves not any sinful misbeliever."[1]

The spoils of the enemy were to be for the poor.

> "What God gave as spoils to His Apostle of the people of the cities is God's and the Apostle's, and for kinsfolk, orphans, and the poor and the wayfarer, so that it should not be circulated among the rich men of you."[2]

But after Mohammed's time a rate on property of about one-fortieth of all that had been in the believer's possession for a year, which had originally been a contribution to the expenses of war against infidels, became converted into a kind of poor rate.[3] A plan of pensions for all Moslems was set on foot by Caliph Omar.

6. I have referred briefly to the position of the beggar and the suppliant in Homeric Greece. In Hesiod's time we find the duty of liberality still insisted upon, but the attitude to the beggar is already changing. Hesiod reprehends begging as a disgrace, and says that once beggars may be helped, or twice, and then they will be refused. He makes almsgiving a matter of reciprocity. "Love him who loves thee, and cleave to him who cleaveth to thee. To him who would have given give; to him who would not have given give not."[4] During the classical period some measure of the primitive communal system still lingered. In Crete and in Sparta there was direct maintenance for all citizens at the public tables. At Athens the phratry retained much of its old vitality. Down to Solon's time the property of the childless reverted to the clan, and even after him the same thing happened to that of intestates. Out of this stock the clan provided for orphans, and the nearest agnatic relation had either to marry or dower the orphan girl.

---

[1] Koran, i. (*Sacred Books*, vi.), p. 44.

[2] Koran, chap. lix.

[3] Palmer, *Introduction to the Koran*, p. 73.

[4] Loch, *Ency. Brit.*, p. 660.

But the new state organization also assumed the duties of maintaining needy citizens, in the first place, by public granaries and the frequent distribution of food to adult citizens on the register; secondly, by public relief to the infirm with property of not more than three *minæ ;* and lastly, by payment for public services, which became more and more important as the institutions of the country passed into the hands of large popular bodies.[1] Moreover, an indirect method of maintaining the roll of citizens and preventing them from sinking into slavery and being lost to the state was found in colonization, bands of Athenian citizens being led out to a newly conquered territory and settled in lots on the land. Solon's legislation against debt slavery had already effectually blocked that broad path of degradation in the ancient world. Apart from state aid there was much private charity, and mutual help societies were frequent. Hospitality still ranked as an important virtue. In some places there were brotherhoods of public charity with a common chest, and there were resting-places and probably hospital provision for travellers at the temples.[2] The temples also were the centres of medical relief. The sons of Asklepios dwelt in their neighbourhood, and probably attended the poor gratuitously, at least at Athens. Hippocrates lays down that it should be a doctor's first duty on entering a town to attend to the poor who are sick.[3]

In Rome, the economic tendency to the centralization of capital and the consequent reduction of the poorer citizens to destitution and dependence took a very aggravated form, owing in part to the facilities offered by conquest and in part to the cheapness and the abject position of the slave. The legislation of the Gracchi, intended to counteract this evil, was probably valuable so far as the division of the public lands was concerned, but injurious in that it started the system of distributing corn to Roman citizens at about half the cost price, a system which had an immense and unhealthy development. The Lex Octavia restricted the right to citizens settled at Rome, and probably later legislation introduced a property test, but the Lex Clodia made the distribution gratuitous, and in the time of Aurelian there were important additions, consisting probably of oil, and perhaps of wine and clothes. The system spread to Constantinople, Alexandria and Antioch, and with the extending of civic rights to the whole of the Empire must have tended to foster a vast and idle city proletariat.[1]

---

[1] Distribution of public money was opposed by Aristotle, who urged that the object of statesmen should be to make the mass of citizens independent, and advised that public relief should take the form of starting them in farms or in business (Aristotle, *Politics*, 1320a).

[2] At Megara there were houses in the town for strangers, maintained at the public cost, and in Crete strangers had a place at the public meals (Loch, 662).

[3] Loch, 662, 663.

In other directions Roman charity had a more beneficent turn. Hospitals with infirmaries for sick slaves attached are mentioned in the first century A.D., while there was a chief physician in each *regio* for the poor.[2] Voluntary associations for common purposes had a vigorous vitality. There were trade guilds with a strongly-developed social life,[3] with their special rites and their own god. They held holidays in common in which men and women both took part, and provided for the burial of their members. In fact, most of the poor belonged to funeral benefit societies.[4] The care of destitute children was undertaken by the Emperors Nerva and Trajan, who lent money at low interest to municipalities for their upbringing. At Veleia three hundred children were thus assisted. But the system, though much extended by the Antonines, fell into disuse in the troubles of the third century.

7. The problem of poor relief was now taken up by the Church. This was in its primitive form a congregation in which the

---

[1] Loch, 664, 665.

[2] During the first century after Christ there were charitable organizations of many kinds in the Roman world. Money was given or bequeathed to buy oil and meal, which was either given away or sold at moderate prices.

Poor parents received help in the bringing up of their children, until the latter could reasonably fend for themselves. There were foundations for the helpless aged, and the sick were cared for, not only by their own community, but through private agencies. Medicines were distributed free. Free burial-places were provided by the community, or again from private sources.

Rich burghers supported education, and in A.D. 100 the younger Pliny gave a library and means to support it to Como, and provided a teacher for the higher branches of education, so that would-be students there were no longer forced to go to Milan (Plin., *Epp.* iv. 13). On great occasions it was customary to make some public gift—buildings, foundations, gladiatorial games, etc. (Friedländer, *Darstellungen aus der Sittengeschichte Roms.*, iii. 151).

[3] Social intercourse appears the most prominent side of the life of the guilds. How far they were "friendly societies" in our sense is not quite so clear, but the provision for burial was usual, and at least in one case other benefits were assured. On these points, and on the immense development of the "colleges," see Dill, *Roman Society from Nero to Marcus Aurelius*, Book II. chap. iii.

[4] Friedländer, i. 146-152. The collegia passed under state supervision and gradually developed into something of the nature of castes; members who fled were brought back and children were compelled to succeed their parents in their turn.

poorer members were relieved out of the offerings given at the altar. As the Church became divided into parishes, the parish became the area for relief, and in Rome, under Gregory, the deacons had the care of the poor, the widows and the orphans in their districts, in each of which there was a hospital. Besides this regular relief, on the first of every month Gregory made a distribution in kind to the poor. This was the model of mediæval distribution, the parishes maintaining their poor, while the bishops and abbots set aside in addition a definite sum for their relief. Endowed charities were, in fact, springing up rapidly in the fourth century, and the Theodosian code mentions institutions for the receipt of strangers, for the poor and sick, as well as orphanages and houses for children. The tithe became a legal obligation under Charlemagne, and out of it the priests had the definite duty of supporting the poor. Almsgiving was a work of merit from the first. "If there were no poor the greater part of your sins would not be removed; they are the healers of your wounds," says St. Chrysostom. And not only was almsgiving virtuous, but voluntary poverty was an ideal. It did not escape the leaders of the Church that abuses were incidental to such a principle, and St. Ambrose recognizes the evils of pauperism and urges method in giving, though his rule is little more than a recommendation of impartiality. On the other hand, the dangers inherent in the conception were much aggravated by its being linked with the system of indulgences.[1] The whole conception, however, was swept away by Protestantism, which accordingly gave an impulse to the movement for substituting public for the ecclesiastical relief of the poor. Already from the growth of the towns new charitable agencies had arisen. The guilds undertook to collect for the support of their members, boroughs established hospitals and almshouses, gave out-relief to the registered poor and supported orphans.[2] In England the disappearance of serfdom and the new independence of the working classes began to exercise the minds of the rulers of the country from the middle of the fourteenth century. The confusion between the vagrant and the independent workman seeking the best market for his labour dates back to that time, and inspires much of the severity with which the sturdy and valiant beggar is treated in the series of laws from the Edwards to Elizabeth. For, blended with just indignation at the idler and impostor was the intelligible but sinister desire of the governing classes to keep the newly enfranchised labourer in a state of economic subjection. For this purpose it was not merely necessary to fix wages, but also, as far as possible, to prevent the workman from moving freely in search of a better market.[1] Hence the repressive side of the later mediæval legislation. On the other hand, as long as mediæval charity lasted much relief was given, though with little system, by the monasteries, and from 1287 onwards the parish became the area for a more or less compulsory rate.[2] The religious and economic changes of the sixteenth century produced a new situation. The suppression of the monasteries closed one source of poor relief, while the conversion of arable land to pasture restricted the labour market. Mendicants—sturdy and valiant beggars—were treated with a severity which culminated in the statute of Edward VI. offering them as temporary slaves to the first comer. But meanwhile a more humane conception was making way. Attempts were made to classify the poor and provide maintenance for the "impotent, feeble and lame who are poor in very deed,"[3] while the able-bodied were to be sent to Bridewell for correction. The movement culminated in the Act of 1601, which definitely acknowledged the duty of society as an organized body to save its poorer members from actual destitution, by appointing overseers in each parish with power to levy rates for the support of the indigent. But in the actual working of this just and beneficent principle great dangers were disclosed. The standing difficulty of discriminating between those who would and those who would not work, and the conflicts between humane sentiment and desire for economy, led by different roads to the degradation of large sections of the working class. The economical motive stimulated each locality to reduce the number of mouths that it might have to feed, and so led speedily to the Act of Settlement (1662), which enabled the overseers to compel any immigrant into their parish to return to his original abode, unless he could give security to the new parish that he would not become chargeable to it. Thus, on the one side,[4] the Poor Law threatened the working classes with a new serfdom. On the other, it tended when laxly administered to general pauperization, and issued towards the close of the eighteenth and the beginning of the nineteenth century in a system whereby regularly insufficient wages were regularly made good at the expense of the ratepayers.[1]

---

[1] According to Thomas Aquinas, he who does an act of charity merits spiritual good through being in a state of charity, and its effect in this respect is tested by the recipient being moved to pray for the benefactor. St. Thomas recognizes that the claims on our beneficence are relative, depending on such considerations as relationship, but alms should consist of all that is superfluous, the donor retaining what is necessary to him in view of his needs, his family and his *dignitas;* but his gift should only meet the actual necessities of the recipient, and not be such as should lead to excess or apathy (Loch, 675).

[2] We find this system as early as the ninth century (Loch, p. 677).

---

[1] See Fowle, *Poor Law*, p. 55.

[2] Loch, p. 676.

[3] From the Statute of 1551 (Fowle, p. 57).

[4] See chap. vii. p. 308.

The worst features of the Act of Settlement were repealed in 1795, and the whole system of the Poor Law revolutionized in 1834. With the workings of the new system thus constituted and the problems to which it has given rise I must not here attempt to deal. But the broad principles underlying the attitude of the modern state towards the poor must be summarily indicated. The fundamental principle of 1601—that it is the duty of the public authority to see that no one actually perishes for want of necessaries—seems to be accepted—if sometimes in grudging terms—by modern civilized governments in general.[2] But starting from this point a considerable onward movement can be traced. First, poverty and pauperism, though connected, are distinct, and this vital distinction is recognized in practice, In very varying forms, much of modern legislation has been aimed at the alleviation of poverty and the raising of the mass of the industrial classes into an economic position in which they could fairly hope to provide the means of a civilized existence for themselves, their families, and even the helpless ones who belong to them. The methods used vary according to the spirit of the age or the economic circumstances of each people. In some countries great measures of agrarian reform accompanying the emancipation of serfs have established a free peasantry upon the soil. In our country, where the divorce of the labourer from the land remains, much has been done by reducing or abolishing the taxes on the necessaries of life; by sanitary legislation, by Factory Acts, and by the recognition of the right of combination. Such legislation as this belongs to the organic life of the modern state—it is among the processes of its healthy growth towards a fuller, completer existence. To such growth diseases are incident, and among them pauperism is one of the chief. In dealing with this disease the effort of state-controlled and voluntary agencies alike is more and more directed to disentangling causes—to discovering what is due to lack of employment, what to physical incapacity, what to faults of character. It may frankly be admitted that we as yet have not much to boast of either in our diagnosis of causes or in our capacity to find remedies for each specific form of the disease. But it is something to have recognized that to have the poor always with us is not a blessing, and that the duty of the rich is not exhausted by the most liberal giving of alms. Public and private charity have, in fact, undergone a transmutation which reflects the general change from the mediæval to the modern order. Free bounty in alms is the virtue appropriate to the lord dealing with humble dependents, just as easy-going communism was natural to the primitive clan. A reciprocal obligation binding the individual to work for his living and the state to see that no one of its members fails to obtain the bare essentials of a civilized existence is appropriate to a society resting on the recognition of personal rights. To develop these two principles in their full meaning, so to apply them in practice as to avoid any form of compulsion which would interfere with the equally stringent principle of personal freedom, to adapt them to varying circumstances in such wise as best to help him who is impoverished through no fault of his own to regain his place in the ranks of independent labour, while yet taking suitable care of those who are mentally or morally incompetent to manage their own lives —these are problems which the future may solve. The most that we can claim for ourselves is that we are beginning to state them with precision.

---

[1] On the growth of the English Poor Law, see Loch, 676–680.

[2] See for France, Sweden, Denmark, Prussia, Holland, Austria, and the United States—Fowle, *op. cit.*, pp. 6, 7. There is sometimes an attempt to distinguish between the duty of the state and the rights of the recipient, which ethically amounts to very little, though it might have legal importance.

The poet tells us that with the advance of civilization the individual withers, but the truer romance of historical prose tells a different story. In early society the individual is nothing apart from his community. The sphere of private property is very small and the power of the individual to enter into new relations by contract and so carve out a career is even less. Land, the principal source of wealth, is communally owned and there is little incentive to individual industry. On the other hand, if there is no wealth, there is also no pauperism. Inequality grows as society advances, and in this advance, on its economic side, private ownership and free contract play the principal part. Yet both these factors are still greatly hampered in the early and middle civilizations by feudal tenures and caste restrictions. So far as these remain the structure of society is still comparatively immobile. The position of the individual is still determined more by inherited status than by his own deserts.

At a still higher stage these restrictions fall away. Men stand fully free to enter into occupations of all kinds, to acquire wealth in all forms. and to dispose of and (in many cases) bequeath it at their will. No divisions of class or even of nationality interfere with their movements or prevent them from entering into relations with other men in which they may find advantage. But these general statements have to be taken with one limiting condition. The liberties that men enjoy are secured only by the social order maintained by the state, and the state in its turn has to demand that every right must be defined in terms of the common good, and neither private property nor free contract can escape this general law. Thus the modern world rests in a fuller sense than previous civilizations on the free individual, but the individual owes his freedom to state law, and the obverse side of the rights which he enjoys is the social duty which he owes. Society has freed him from other ties, but not from the tie which binds him to the social life. If the individual is one pole, society as a whole is the opposite pole of the modern ethical system.

Finally, customs admitting the acquisition and holding of property have as their reverse side the necessity for dealing with those who have and can acquire none. Here we have a quite parallel evolution. In primitive society there is an easy communism among the kinsfolk, often—but by no means always—much consideration for children, the aged and the helpless, and lavish hospitality for the stranger if the host chooses to receive him. In the more advanced societies the duties of the governing classes are strongly insisted on by religion and social ethics. Those whom the decay of primitive communal institutions has left helpless and who have fallen outside the regular lines of the social structure are recommended to the charity of their superiors. The lords of the land must be merciful and forbearing to their dependants. The rich are taught to give freely out of their abundance to the poor. At a higher stage, again, the method of arbitrary doles to a dependent class gives way to the conception of a reciprocal obligation between the state and its citizens, and contented acquiescence in perpetual poor relief to the systematic attempt to get at the roots at once of poverty and pauperism by organic reform in the economic structure of society.

SUMMARY

We have now considered in outline, first, the main principles underlying different forms of social organization; secondly, the manner in which the behaviour of individuals is regulated, their duties enforced and their rights maintained; and thirdly, a number of the rules determining in the main relations of life what those rights and duties are. We saw that primitive society rested on ties spontaneously formed by blood-kinship, by intermarriage and perhaps by mere neighbourhood; that the social structure is extended and in some respects also consolidated by the rise of military power and the separation of rulers and ruled; we saw that the principle of force, underlying government at this stage, is transmuted and partially moralized by ethical and religious influence into a principle of authority, exacting obedience of its subjects as a right, but owing them consideration and paternal government as a duty. We saw, finally, that in the higher civilizations a new principle makes headway, whereby the fabric of society comes to rest rather upon the goodwill of the citizens and the social nature of man, while the claims of government are based not on self-constituted authority backed ultimately by the sword, but on the necessity of an ordered rule in the interests not only of social co-operation, but of individual freedom.

In the maintenance of rights and redress of wrongs, the movement, broadly viewed, is parallel. In the beginning, self-redress by the individual, by his kindred, or some other small group is the predominating fact. Hence we ascend by many gradations to the impartial justice of a public tribunal, investigating each case by rational process, distinguishing crimes from civil wrongs and limiting the responsibility for a wrong to the individual perpetrator. Growing up, as a rule, under the shadow of the principle of authority and acting in the interests of external order rather than of personal rights, the law is administered often with insufficient safeguards for the innocent and with cruel severity to the criminal, and the next step is to remedy these defects by changes aimed at reforming the criminal and cutting off the sources of crime. At each step there is an advance in the maintenance of order, and on reflection we recognize that the better maintenance of order means greater security for individuals in the enjoyment of their rights. Again, the elaboration of the legal view of responsibility isolates the individual from the groups which in primitive society stand and fall together. But it isolates from these only to bring him into close dependence on a wider society—the state as a whole, to which he finds himself bound by mutual obligations of duties and rights.

In the position of women and the structure of the family we find a development which, if not parallel, is yet analogous. We have seen the natural family beginning with a relatively loose organization, and passing into a state in which close-knit relations were obtained at the expense of the wife, while the aim of the higher civilizations appears to be to reconcile the intimacy of the union with equal freedom for both parties. The movement is, on the one hand, towards closer structure, on the other to personal freedom, and the problem is, again, to reconcile the claims of personality and the duties of a common life, though this common life is here that of two individuals rather than that of all society. On the other hand, in the position of women, economically and socially, apart from the question of marriage, it is the idea of personality that is mainly prominent. For in the early stages there is little respect for women, and, so far as labour is divided, it is more often than not to their disadvantage. Then in spite of the dependence of the wife there arises as a partial compensation the view that woman has a sphere of her own, in some ways higher than that of her lord. But when this view, which carries in it the seeds of a deeper respect for women than the older world conceived, is pushed to its conclusion, it is seen that, to realize what is in them, women, too, must have the open field which men demand, and be free, if it be only to work out and establish their diversity.

From sex we passed to other divisions of human beings which affect the conception of moral obligation. In the primitive world every man is a member of a group to which his obligations strictly so-called are limited, members of other groups being indifferent or hostile. From this "group-morality" arises, first, the problem of intertribal, or, as they afterwards become, international relations. In the early stages these relations are frequently hostile, and hostility is directed towards the individuals of the opposing community, and not merely against the community as a corporate whole. A step onward is taken when the personal character disappears from warfare and the result of victory, even if pushed to the point of annexation, is not to cancel the rights of the conquered or to punish them for attachment to their own side. Lastly, in this fuller recognition of a common humanity—for that is what it amounts to—we find the beginning of a more far-reaching conception of a law, and therefore ultimate of a society of nations to which each independent state owes allegiance.

Considered internally, the small primitive group was found to be—apart from the distinction of sex—generally speaking, a society of equals. Differences of class or caste, and the distinction of free man and serf or slave, arose in the earlier phases of social growth. On this side personal rights are apt to suffer deterioration in the earlier phases of social advance. The growth of a large order and a firm authority is hostile at the outset to the maintenance of individual freedom and social equality. Ethical and religious progress tends to redress the balance, and the claims of personality reassert themselves piecemeal in the higher civilizations. But this wider recognition of personal rights implies that the barriers which divide classes and sections of the community are overcome, and a true social unity achieved.

Turning from the rights of person to those of property and contract, we have seen the simple quasi-communism of primitive peoples give way to a system of free contract and individual ownership, from which the hampering restrictions of caste and feudal status gradually fall away. Once again individual energy and initiative are set free from all restrictions, but once again individual freedom was seen to raise questions of social control. Finally, in the treatment of the poor we have traced an analogous movement from the customs of hospitality and free sharing between neighbours through the paternal benevolence of a superior caste to the recognition of a mutual obligation as between the individual and the state.

Thus, amid all the variety of social institutions and the ebb and flow of historical change, it is possible in the end to detect a double movement marking the transition from the lower to the higher levels of civilized law and custom. On the one hand, the social order is strengthened and extended. The blood feud yields to the reign of law, personal chieftainship to a regular government and an organized police. At the same time the social organization grows in extent. Instead of small primitive groups we have nation-states or continental empires, great areas enjoying internal peace and owning a common law. On this side the individual human being becomes more and more subject to social constraint, and, as we have frequently seen, the changes making for the tightening of the social fabric may diminish the rights which the individual or large classes of individuals can claim, so that fewer rights may be enjoyed, though, with the improvement of public order, those which remain are more secure. In this relation liberty and order become opposed. But the opposition is not essential. From the first the individual relies on social forces to maintain him in his rights, and in the higher form of social organization we have seen order and liberty drawing together again, the underlying truth that unites them being simply that the best ordered community is that which gives most scope to its component members to make the best of themselves, while the "best" in human nature is that which contributes to the harmony and onward movement of society. Thus the modern state comes to rest more and more on the rights and duties, the obligations and responsibilities that we include under the ethical and legal conception of personality. The responsible human being, man or woman, is the centre of modern ethics as of modern law, free so far as law and custom are concerned to make his own life, bound by no restrictions of status nor even of nationality or race, answerable for his acts and for those of no other, at liberty to make the best or the worst of himself, to accept or decline relations with others. On the other hand, as this free individual breaks the shell of the older groupings, he comes into direct relations with the state as a whole which succeeds to many of the rights and duties of the older groups. The social nature of man is not diminished either on the side of its needs or its duties by the fuller recognition of personal rights. The difference is that, so far as rights and duties are conceived as attaching to human beings as such, they become universalized, and are therefore the care of society as a whole rather of any partial group organization. The typical instance of this change is the rise of public courts enforcing a law which is equally binding on all members of society. But, lastly, the universalism which the idea of personality holds within it cannot be satisfied with the limits of the nation-state. In proportion as obligations are determined by human nature as such they overstep national and racial as well as family and class limitations, and apply to humanity as a whole. Hence, as has been seen in analyzing the idea of internationalism, the double meaning of "humanity" as an expression for a certain quality that is in each man, and as an expression for the whole race of men, is not a mere ambiguity. The two meanings are intimately related, for "humanity" as a whole is the society to which, by virtue of the "humanity" within each of us, we really belong, and these two meanings are the poles between which modern ethical conceptions move. Thus, if we are to sum up the whole process sketched in this Part in a phrase, we may say that it is in this double sense to realize humanity.

The controversies which have filled modern history attach themselves in their ethical aspect sometimes to one side, sometimes to the other of this principle. Of many of these little has been said in this Part, because in outline the facts are well known and a detailed discussion would be impossible within the limits of a general sketch. It may, however, be pointed out that the ethical questions which have agitated the modern world from, say, the period of the Reformation to our own day have turned either on the vindication of personal right or on the extended conception of human brotherhood. On the one hand, ethical progress has taken the form of a protest against the principle of authority which at the outset of the period everywhere dominated the world, and, so far, has tended to curtail the sphere of government in favour of individual liberty. This is the history, for example, of the very gradual process whereby first liberty of conscience and finally religious equality has been established as a corner-stone of the modern state. This change is sometimes represented as merely a consequence of religious scepticism, the implication being that if the world held itself as certain of fundamental truths as it did in the twelfth century it would not hesitate to impose them on all its members by force as it did then on the rare occasions which arose. But there is a deeper principle involved, illustrating the many-sided meaning of the idea of Personality. Far from implying an indifference to religion, the principle of religious equality is a recognition of the profound importance of intellectual sincerity, particularly in relation to the deepest problems of life. From the moment that honesty is recognized as a duty it becomes increasingly repugnant to penalize the beliefs to which it may lead. The heavier the penalties the more exclusively they fall on the stoutest and best natures—that is, precisely on those best qualified under happier circumstances to serve society; and the only logical alternative is to admit the necessity for divergencies in an imperfect world.

It is not to be supposed that this principle is free from logical defects or practical difficulties. It is easy to show that there are or may be opinions which in some relations must disqualify the holder. For example, a sincere conviction which would prevent a man from conscientiously discharging the duties of a particular office must disqualify him from holding the office. But the principle of freedom in opinion would merely require that his unorthodox or unpopular views should not disqualify him for other offices with which they are not concerned. In other words, freedom is limited by responsibility. A man undertakes to fulfil a certain social function, to administer, to teach, or to preach, and it is expected that he will fulfil and not exceed that function, and as long as he does so his thoughts are his own. There is thus a certain logic below the apparent compromises of public life which, by enabling men of most diverse views to co-operate without injury to their own self-respect, secures the best brains and the highest characters for the public service.

The modern state undoubtedly uses constraint, as every organized society must do, but the grounds on which constraint is justified in the modern world are distinctive and significant. For constraint may be justified, and in the older conception was justified, on the ground that if a man will not do what he ought he must be made to do it, and it may be applied to speech and writing on the ground that if it is wrong to do a thing it is equally wrong to recommend it. But it is precisely in these two relations that compulsion most offends the modern idea of liberty. To force a person to act rightly for his own sake implies an ethical confusion, for it is only in so far as he acts freely that his actions have ethical value. Conversely, to suppress free speech is to bring force into the true spiritual world—the world of ideas, where it is most urgent both from the personal and ultimately from the public point of view that there should be freedom. On the other hand, when the freedom of one man is used to molestation of another or the hindrance of what are deemed his legitimate activities, constraint is required. And if individual freedom may not be used to the prejudice of another individual, neither can it claim the right to thwart the will of society as a whole. Hence an important distinction which will be found to underlie much of modern legislation. As long as the general will can be carried out effectively without compelling the reluctant minority to follow suit, the tendency is to avoid compulsion. On the other hand, where certain conditions are believed to be essential to the common good, and the recusance of a minority, perhaps of a few individuals, would render them unattainable, compulsion is deemed legitimate. In such cases it is felt that the general will, dealing with general interests, has rights quite comparable in kind to those of the individual will in relation to its individual interests, while to enforce compulsion is, after all, only in accord with the universally admitted limit to liberty that it does not convey the right to injure others. Further, compulsion is limited to actions, since words alone cannot impede a resolute majority from doing what they wish to do, unless, indeed, their convictions are a little shaky, and in that case it may, perhaps, be all the better for them to hear the other side. Again, in leaving expression free, the law leaves to each man what is peculiarly his, the right to think for himself and honestly express his convictions whether he is allowed to act by them or not. In all these ways the idea of personality seems to have profoundly influenced the theory and practice of legislation, tending not always to the curtailment of social activity—for, as we shall see later, it has a counter tendency in the enlargement which it gives to the conception of the common good—but certainly to the material modification of the character and aims of law.

Freedom of discussion practically implies the influence of discussion upon government, and the doctrine of popular sovereignty with universal suffrage drew its strength first in the modern world from the conception of the right of each individual to have a voice in determining the laws under which he has to live. The democratic movement was directed at the outset against arbitrary power. Its first demand was for personal freedom, *i. e.* immunity from arbitrary treatment and security in the possession of legal rights. The political rights which came next appeared naturally as an extension of this freedom and as another check of governmental authority. But as soon as they were adequately secured and the ultimate sovereignty of the people was realized, the notion of a check on government became inadequate. The people as a whole could not be engaged merely in checking itself. In point of fact, whenever it was a question of extending the franchise it was another side of the principle of personality, the idea of equal rights, that came forward. But this idea, while founded on personality, is meaningless apart from the conception of something which all share alike, and equality in political rights, therefore, implies a community in which members have an equal right to take part in the functions of government—that is to say, merely a more perfect or more complete community than one in which certain members are wholly or in part excluded from the common life. Political democracy, therefore, seems to range the whole distance between the two poles of the humanitarian idea, resting on the pinciple of personality on the one hand and of the all-embracing community on the other.

The family and the state are not the only communities which men form. On the contrary, a leading characteristic of the modern world is the ease with which people combine for purposes of all kinds, from that of hearing each other's views on Browning to that of regulating wages or promoting the passage of a Bill in Parliament. The right of association is one which often raises grave political and social problems, and, strangely enough, it can be brought into contact with both poles of our "underlying principle," and in either case it may receive support or opposition according to the reading of the facts. Take the case of trade unions. These were, as a matter of history, legalized in England under the influence of individualistic ideas, the ground taken being the right inherent in individuals to associate together freely for the promoting of their several interests. Yet the strength of a trade union lies entirely in the Collective Bargain, and its moral force is derived wholly from the conception of the workers in a given trade—ultimately, perhaps, all the manual workers of the country—as forming a community with certain objects in common. So far the trade union finds support both in individualism and collectivism. Yet from both ideas it is possible to derive arguments against the right of combination. On individualist grounds it may be condemned as impairing the rights of the non-unionist, on collectivist grounds as forming a state within a state, and assuming functions which only the government, representing employers as well as employed, brain workers as well as manual workers, can fairly carry out. Hence, in point of fact, trade unionism has always been opposed by the more extreme among Individualists and Socialists, and has found support among the more moderate of each party. The movements of opinion and of English legislation on the subject from 1800 to the present day reflect with tolerable accuracy the fluctuation of thought between these poles, according as now one, now another, aspect of the problem took the leading place in the public mind, the tendency being, upon the whole, to recognize the necessity of voluntary combination as a remedy for the economic weakness of the mass of manual workers and to bring it by the definition of its rights and responsibilities more closely into connection with the state system.

What has been said of trade unions applies *mutatis mutandis* to voluntary association in general. The state organization is far from exhausting the necessities of common action. It can use its power of compulsory taxation to carry out certain objects of common interest. But precisely because it uses compulsion, it has to give fair consideration to all classes and all sections and cannot wisely proceed further than the general opinion of the community warrants. Voluntary associations, on the other hand, which exercise no compulsion on any one except on their own members, who freely join and are free to leave them, may rightly pursue a thousand and one laudable objects for which a combined effort is necessary, but which, perhaps, appeal only to a few. Thus the fuller development of the principle of community or association does not necessarily imply a continual expansion in the sphere of state activity. On the contrary, the activity of voluntary combination has developed and is developing with at least equal rapidity.

Under the name of voluntary association we think naturally of combinations deliberately formed for some definite purpose. But there is also a form of common life into which men fall, if not hindered, by a kind of instinct, a life based on old traditions, and a certain community of character, language, custom, and generally religion, all that goes to make up the impalpable but very real bonds of nationality. Struggles for national freedom have made a large part of the modern movement, and have generally been associated with ideas of personal liberty and of popular sovereignty. Yet the connection of thought is not always easy to make out. Where a race is definitely held in subjection by an autocratic government which concedes to it neither political nor equal civil rights, the case is indeed clear enough. So far it does not differ from that of any disfranchised class. But further, though fully enfranchised, a nationality may be incorporated against its will with a larger nation in one political community, and its separatist aspirations may then be regarded as having no special sanction in the principle of Liberty and as being opposed to the widening of human brotherhood in that they tend to split up society and perpetuate divisions. As to the first point, the proof of the argument is in practical experience. If it turns out possible to maintain the undesired union without special restrictions on the political and personal rights of the recalcitrant people, well and good. But the stronger the national feeling, the less likely is this to be the case and the further are governments driven along the road of coercion and into the forbidden ground of the modern spirit, where men are made to suffer most in proportion to their nobility and steadfastness of character. The heroes of nationalism have, wherever their cause has flourished, connected it with that of personal right, and put their opponents into the odious position of punishing men for qualities which in a cool hour they must themselves admire. From the social point of view, again, if fewer differences existed the problems of social organization would be much simpler, but the social life would also be poorer, At this point divergences in the conception of a community come to a head. If the best community is that in which the order deemed most suitable by the wisest heads is imposed on all members without regard to their wishes, then differences of nationality can expect little consideration. But if the best-ordered society is that which makes most room for the self-development of many different types, the case is altered, and just as there is free play for the individual so also is there room—though to make it may involve great changes in the governmental machinery—for those groupings of individuals which spontaneously form and stubbornly maintain themselves against legal pressure. Thus, from several points of view the re-grouping of peoples according to national divisions, which has made up so much of modern history, falls into its place as part of the wider movement which has replaced the arbitrary government of authority by the political state resting on the common good and general assent of the great bulk of its citizens.

Probably in all the movements here mentioned the side which has been most prominent in history has been the vindication of individual or group rights as against governmental authority. But it would be a mistake on that account to identify them with any general tendency towards individualism as against the claims of the common life. On the contrary, at every step the fuller recognition of rights implies a deepening sense of common responsibility, since, as has been repeatedly asserted, the recognition of a right implies its maintenance by society. From the assumption of the duty of protecting life and limb onwards the development of the modern state has witnessed an extension of the sense of collective responsibility—a responsibility which may almost indifferently be stated in terms of the rights of individuals or the duties of society. On whichever of the two principles, in practice the modern state guarantees the bare necessaries of life to all its members, and adds thereto in varying degree the conditions of something more than a bare life. In a long series of industrial statutes it has sought to ensure the safety and health of the working class, and to protect its members from fraud and oppression. It maintains a certain standard of sanitation in buildings, provides or encourages facilities for transport, and gives the rudiments of education without charge. How much further the state machinery can be profitably used in this connection is matter of controversy into which I do not inquire here. But whether trust be put in the machinery of law or the efforts of voluntary agency, the sphere of combined action grows in proportion as the respect for human personality deepens.

The obligation to do what is in them to make life more human will be felt by some as a debt which they owe to suffering human beings, by others as something due to society. But in this relation at least it is easy to recognize that it is the same principle which is seen from two different sides, and that the conscious efforts to better the life of humanity in which the whole tendency of modern thought is summed up can work through no other channel than the humanity which is alive in every man and woman.

PART II

THE BASIS

CHAPTER I

THE EARLY PHASES OF THOUGHT

1. THE history of law and custom gives us one aspect of ethical evolution. It sets forth the standard of conduct, or rather the standards recognized by different societies at different times. But behind the question of the moral standard is that of the moral basis, the grounds on which morality rests, the spirit in which it is conceived. For, besides the question what kind of action is expected from us by our neighbours, our rulers, our spiritual pastors and masters, moral philosophy has to recognize the further question how it is that these expectations arise. On what grounds do rules of action rest, what authority promulgates them and by what sanction are they enforced ? If it happens to be the interest of any individual to disobey them, what reason, other than physical compulsion, can be assigned for adhering to them ? What is the penalty of disobedience ? What, if wrong is done, are the means of reconciliation ? In other words, behind the question of the moral standard there is the philosophical question of the nature of moral obligation, of moral authority, of the moral sanction, or, to use one expression for them all, there is the question of the basis of the moral order.

To understand how men have conceived this question, and what sort of answers they attempted to propound for it, is the task that remains for us. But to understand ethical evolution on this side we have first to turn to departments of thought that are not in their origin ethical. For men's views of what is right are necessarily steeped in influences derived from their whole outlook upon the world, the range of their mental capacity, their conception of the creating, sustaining, and governing causes of things, their theories of human life and society. We cannot, therefore, thoroughly understand the history of ethics without knowing something of the general development of thought. At the same time we cannot here deal with this development in all its fulness. We must refer to it only so far as it throws light upon our special question. We shall have, that is, to take account of what men think and of how they think upon certain fundamental questions that affect practice.

It follows that we shall have to examine, however concisely, some leading features of religious development. Indeed, according to one usage of terms we should have to concern ourselves with nothing else. For a man's religion is sometimes held to include the sum and substance of his vital thought, the final meaning for him of his total outlook upon the world, and if so it clearly includes ethics as a part. In a historical study, however, it is more convenient to consider religion as the body of belief and practice relative to a spiritual order on which human beings are dependent. The pivot of this order may be a personal being or beings, or it may be some conception of the conditions governing the life and destiny of man. It may be the life beyond the grave and the means of securing happiness in that state which inspires the religious interest, or it may be the spiritual influences which shape the life of the individual and the race for good or ill. The conception of the spiritual is of infinite variety, and religions differ in accordance with the purity of its development, but in one sense or other there is religion when man's life is held to be subject to spiritual beings or spiritual principles, to which he owes service, by which he is governed, with which he has in any way to make his account. In this sense religion and ethics, though intimately related, are not identical, nor is the religious view of the governance of the world, though vastly important, the only view with which we shall have to deal. We shall distinguish, though we shall not therefore separate, the religious, the ethical, the scientific and other lines of development, and follow each in turn so far as is necessary for our purpose.

2. The religious interpretation of life and the world must at every stage use the materials of thought and experience that it finds to hand. Itself an effort to get on terms with the world surrounding human life, its tenets and practices are not directly suggested by experience, but it necessarily makes use of experience and of such interpretations of experience, or such fancies and transformations of experience as the thought of its adherents are capable of forming. The religious interpretation of life, then, is relative to the general level of thought, and to understand the earlier phases of religion we can best begin by describing certain modes of conception common to early thought which are not themselves necessarily or invariably religious, but which supply

material and even formative conditions of early religion. We may take, first, the theory of Spirits, to which the name Animism has been given by anthropologists. The name and the definition are so far open to criticism that the theory of a single Creator might be said to be covered by the general term. But when we look a little further into the matter we find that the kind of spirits intended where the term Animism is used have certain distinguishing characteristics. These characteristics are not invariable. Sometimes one is absent, sometimes another. Often our information is not sufficiently definite or complete to show us precisely how the spirit is conceived, but the features which we shall describe have a certain affinity to one another, and wherever the presence of any one of them is clearly marked, we may describe the belief as animistic.

(a) *The quasi-material soul.*—Whether the human soul was or was not the original model on which the primitive conception of the spirit was formed, it serves for us as the type to which spirits of all kinds can be compared, and is the natural starting-point, if not of history, at least of exposition. Now the belief in the human soul is not, as such, animistic. In one sense or another it may be called universal, for even an advanced materialist must admit a difference between the living and the dead body, and if soul is a mere expression for the fact of vital function or, perhaps, of conscious life, can have no objection to admitting its existence and extinction. He might rank himself, if he wished to use anthropological categories, with the animatists, for he regards the body as animated. What distinguishes the animistic view of the human soul is that it is an entity, separable from the body in which it dwells, but itself possessing many bodily characteristics, as of some subtle material essence. Thus the spirit of man goes out in dreams, and appears to other people. Sometimes it leaves him temporarily when he sneezes, and hence it is well to pray for a blessing on him in such a moment, as we do unto this day. It quits him in trances; it leaves him finally at death. Since the spirit is a mere attenuated double of the man himself, it appears also in his shadow,[1] and can be seen mocking him when he stands by the side of a pool.

---

[1] For instances of the shadow or reflection as the soul, see Tylor, i. 430; *Golden Bough*, 3rd ed. Part II. p. 77. With this idea we may connect the use of a picture as a supplementary home or body for the soul of the deceased, which so often plays a prominent part in the cult of the dead, *e. g.* in ancient Egypt and in China (De Groot, i. 113). The distinction between regarding the picture (1) as a receptacle for the dead man's soul, and (2) as the dead man himself in a new form, is one which on animistic principles cannot be drawn with any clearness or consistency.

These different appearances of the double, or spirit, have not escaped savage man, and have led him in many cases to an almost bewildering multiplication of souls.[1] With that multiplication we need not now concern ourselves, we attend only to the fact of the soul's transmigrations. This impalpable entity is itself, it may be, transferred from one dwelling-place to another, leaving the outer seeming unaltered. The souls of the dead may pass into tigers, as among the Malays, and often also in India, and in that form they may take vengeance on those who harm them in this life. And sometimes, if possible, the tiger is not killed for fear of injuring a dead relative,[2] but is greatly feared for his supernatural even more than his physical prowess. The soul may wander away voluntarily in a dream, and then sometimes may lose its way, or be prevented from returning. It may be extracted by sorcery or carried off by ghosts, whence come illnesses, madness, and death. It may be trapped while on its journeys, but it may also be recovered for a consideration by one who knows the proper charms to catch a soul. It may even be swallowed inadvertently by a doctor. If irretrievably lost it may be replaced—so loosely is it connected with the real personality of the man—by another soul purchasable at a price.[3] Finally, at death it still hovers in the neighbourhood, and may perchance be recalled if the mourners raise their voices and entice it with good things.[4]

The spirit being thus separable from the body and yet so intimately related, we have to inquire into the nature of the connection. Is the spirit dependent on the body, or does the body rather belong to the spirit, which enters it from without and merely uses it for a convenient dwelling? It would be hopeless to expect a consistent answer to these questions from animism. Its conceptions fluctuate between the two ideas.[5] But this very elasticity helps animism to deal with many of the facts. Disease, for example, may be possession by a temporary demon.[6] The inspired soothsayer, the raving madman, are momentarily possessed by god or demon. The quick-witted plan, the impulsive crime, are stimulated by Pallas Athene, or by the Erinnys,[1] which is impelling a man to his own destruction. Animism, in short, has a ready explanation for all the cases in which we seem to suffer or to act not wholly by and with our own will. But what of our own spirits? Are they dependent upon the body or not? Clearly not altogether so, or they would not wander away in dreams, nor would the soul escape at death with the last breath, nor live on while the body manifestly decays. Yet animism is far from being satisfied that the soul can do without some bodily support. Sometimes the corpse itself is necessary to the soul's life, and is accordingly preserved with jealous care. The corpse remains quasi-animated. It can eat and drink. Its mutilation injures the spirit. If unburied it suffers from exposure and its spirit will cause a drought to protect it from the rain.[2] It is as far as possible protected and preserved that the spirit may at the proper time rejoin it. But since in reality the corpse decays, what is the soul to do? Apparently it needs a body of one kind or another. The Australian ancestor of the Alcheringa deposited his soul in a pebble or oblong piece of wood. The Egyptian made likenesses of the deceased, statues and bas-reliefs, which the soul could inhabit. The Chinese make a tablet specially fitted for the dead man's habitation by the accurate inscription of his name and all his titles. Among other peoples quite a different view is taken of the soul's needs. Dimly conceived as a thin aerial substance, it is thought to require that the body, together with its food and raiment, should be reduced to the same form. So the corpse is burnt, and with it all that is devoted to the service of the dead. In all these cases, whether with the aid of the corpse or without it, whether in the neighbourhood of the grave or in another world, or in both places at once, the soul is held to maintain a semi-independent existence, its happiness or misery being determined largely by the amount of attention paid to it by its descendants upon earth. There remains one other alternative frequently adopted and finally becoming the basis of a great religious system—that it should find itself a new home by passing into another being. It then belongs for life to the body which it inhabits, but it existed before the body and will survive it. There is a limited or partial interdependence. This limited interdependence we may take as the central idea around which animistic theories radiate. Soul and body are two things, not one. But without soul, body decays, and without some sort of body, real or fictitious, the soul appears to be, at best, enfeebled and miserable.

---

[1] For illustrations, see Tylor, *Primitive Culture*, i. 434.

[2] Waitz, v. i. 166.

[3] For a summary of the evidence, see *Golden Bough*, 3rd ed. II. 30–77.

[4] That this is the meaning of ceremonial wailing for the dead in China is shown by De Groot (vol. i. pp. 244, etc.). De Groot compares the Roman *conclamatio*, and corresponding customs in Picardy, California, the Caribbean Islands, etc. Religion has here, as so often, merely stereotyped and given inner meaning to a natural impulse.

[5] See Tylor, *loc. cit.*

[6] With equal facility, in connection with the opposite pole of animism, disease becomes a quasi-material object, magic stones or pointing sticks, driven into a man by spirits, which can be extracted by a doctor, and perhaps transferred to another person, or walled up in a tree (*Golden Bough*, 2nd ed. iii. 29, etc.; Tylor, ii 148).

---

[1] The ἄτη which is responsible for an act of folly or crime is implanted in the soul by the Fury which will avenge it (see, e.g. *Odyssey*, xv. 233). Cf. Leist, pp. 320, 321; Tylor, ii. 126–131.

[2] De Groot, i, 57, 342; iii. 918, etc.

Though the soul is so subtle and impalpable that it can transfer itself without difficulty, or without betraying the change through any physical or outward modifications, it is nevertheless capable of being dealt with as we deal with visible and tangible objects. It may be tied with cords, or driven away with weapons, or, since, after all, it has a modicum of intelligence, frightened away with shouts and threats. When an Australian war party loses a man the spirit of the dead follows them back in the form of a bird, and is frightened off when they get home. A part of the ceremony of mourning is to beat the air—not as a symbol of the futility of human grief—but for the purposeful object of driving the ghost away, and the funeral is not complete till the spirit is frightened out of the camp and into the grave where it should lie.[1] Half the world away we find the Guaycurus of Paraguay sallying forth with clubs to repel the storm spirit,[2] and we know from Herodotus that the Caunians, being disgusted with their gods, took bows and spears and drove them bodily out of the land with execrations and insults. As late as the conquest by the Spaniards, bad spirits were driven annually out of Cuzco, in Peru, by armed warriors.[3] Demons may be caught and imprisoned, as among the hill tribes of Bengal,[4] or they may be expelled by charms, as when the llama's blood is sprinkled to this day in Peru on a doorway to keep them out of the hut. The soul may be put away for safety into a tree,[5] as in the famous case of the Golden Bough, or, as it leaves the dead man, it may be induced to come back and re-incarnate itself in some child of the family. When the West African negro wakes with a headache or sickness he sends, Miss Kingsley tells us, for a doctor, who, promptly diagnosing his case as a loss of soul, proceeds to institute a search. In process of time the soul is duly caught, by methods best known to the doctor, brought in a box to the sick man's bed, and duly blown into him, to his mental comfort, and thereby, through the power of faith-healing, possibly to his physical restoration.[1]

---

[1] Spencer and Gillen, I. 493–506.

[2] Payne, i. 390. Among the Haytians the gods would shamelessly quit the tribe in case of misfortune, and were therefore secured by cotton ropes (*ib.*, p. 319). [3] Payne, i. 391. [4] Reclus, *Primitive Folk*, 301–303.

[5] De Groot (iv. 106) has a good story of a Chinese criminal who could not be put to death because he had put his soul into a bottle. Three days after being decapitated his trunk and head had re-united themselves. But his mother, whom he had beaten, betrayed his secret, and on her advice the vase was broken, and after this the criminal was successfully flogged to death.

But the commonest evidence of the material character of the spirit is its power of eating and drinking like an ordinary man. The gods of the Babylonians came about the sacrifice like flies; the ghosts in Hades lapped the blood which Odysseus brought for them. The spirit of the place partakes of the drops of wine which are poured out from a cup. The dead man is a participant in the funeral feast. The only doubt here is whether the ghost eats the food or the ghost of the food.[2] Since the food does not actually disappear, the savage mind is put to some trouble on the point, and sometimes the difficulty seems to have been the cause of scepticism. The question was put by a young Zulu in this way: "When we ask, 'What do the other Amadhlozi do, for in the morning we see all the meat?' the old men say, 'The Amatongo lick it,' and we are unable to contradict them and are silent, for they are older than we are and tell us all things; we listen, for we are told all things, and assent without seeing clearly whether they are true or not."[3] Such difficulties could be resolved by the theory that it was the soul of the sacrifice that went to the gods, as the Fijians hold, and so at a cannibal feast among them there is a double advantage, for while the men eat the body the gods eat the soul, and both are benefited alike. The dead wife of Periander told her husband that she was cold because her clothes had not been burnt, and she was only warm when he had made a holocaust of the wardrobes of the Corinthian women. The dead man's horse is slain at his grave that the ghost of the one may ride the ghost of the other. The wife is sacrificed to a similar order of ideas, and sometimes, the principle being logically carried through, the weapons and implements of the deceased are broken before they are laid beside him.

The spirit being thus materialized appears to enjoy an independent existence of its own. Here we touch the central contradiction of animism. The conception of the soul has its justification either (*a*) in the facts of consciousness, or (*b*) in the laws of the living body, or in both combined. In either case it is contrasted with the notion of body as such, for consciousness has no bodily attributes and the laws observable in bodies are not bodies. Yet for animism the soul turns out to be another body—a visible and material thing—only thinner and less palpable—a mere "double" of the appearances which it should explain. For the primitive mind cannot grasp an object of thought without transforming it into an object of sense. It needs a principle, connecting things that it can see or hear, and by a confusion of categories it makes of it merely another thing that it can see and hear.

---

[1] Miss Kingsley, *West African Studies*, p. 200.

[2] Strictly speaking there is a third alternative—the corpse itself may eat the food. This appears to have been the primitive Chinese conception, which by the time of Confucius had yielded to the somewhat more refined view that the food placed on the grave was destined for the soul. Hence arose the custom of placing the offerings upon the tomb instead of within it (De Groot, vol. ii. p. 384).

[3] Tylor, ii. 387.

(b) *The sub-human soul.*—If the soul of man is materialized by animism, the bodies of other beings are in return spiritualized. A familiar and widespread, though probably not a universal development of animism, is that which sees spirits everywhere, not one spirit that underlies all things, but separate spirits underlying all manner of things as the efficient causes of their qualities and actions.[1] A stone, a tree, a blade of grass, the wind, an animal, a human being, a mountain, a river, the sea, the sky, the sun, the rain, an epidemic disease—any or all of these may be conceived by the savage mind as the dwelling-place or the manifestation, as the case may be, of a spiritual agency which controls their behaviour; and this spiritual agency may be the object of fear or worship, of prayer and supplication, possibly of cajolement or abuse, finally of actual physical violence. Naturally, not all spirits move men alike. Harmless inanimate things are seldom at this stage the objects of much solicitude, unless by some accident of belief they are associated with a powerful spirit for some special reason. Thus, among the *Tshi* of the West African coast, everything is supposed to be animated by indwelling spirits, but little attention is paid to the spirits of bushes, grasses, stones. More dangerous ones, as the spirits of the rivers and lagoons, the sea, the mountains, are the objects to which the Tshi cult devotes attention.[1] Nevertheless, spirits may inhabit the most unpromising exterior; thus an essential part of Australian belief is the indwelling of spirits in certain objects, generally oblong pebbles[2] called "churinga." But these fall within the explanation hinted above, for they were stones carried about by the men of the Alcheringa, the ancestors of the "great long-ago," who deposited their souls in them and left them by some tree or cave, from whence at times they pass into the children of the present generation. Aino spirits inhabit curiously peeled sticks. The Waralis worship a stone smeared with ghi, but "there is something more there than the stone."[3] It is far more congenial to our ways of thinking to worship the thunder god with the Hidatsa, to believe in sylvan deities with the Burmese, and to people caverns and whirlpools with spirits like the Congolese. It is natural for us to regard the human soul as the model on which the spirits of animals, plants and inanimate objects are formed, and in a sense it is so. For it is, of course, the experience of mental life within the self that gives meaning to all ideas of a mental life without. But we are hardly to suppose that the idea of the separate soul in man is first formed and that by a reflective process a corresponding double is attributed to material things by way of explaining their notions. Such attribution is logic, though an imperfect and uncritical logic, and logic plays but a secondary part in primitive thinking. Probably the earlier stage is that which merely treats inanimate things as though they were alive, and plants and animals as though they were human, without attributing to them a separable spirit. This is the stage called Animatism[1]—the theory that things are alive, or still more strictly, the practice of treating them as alive—as distinguished from the theory that they are the abode of spirits. The distinction is rather one of degree than of principle. Animism is animatism made more concrete and definite. For the very fact that "prayers" or incantations are addressed to a being is proof that he is regarded as understanding them: that if sacrifices are offered him he is held capable of receiving them and enjoying them—in a word, that he is to that extent a living being and manlike.

---

[1] While the belief in the soul of man is probably universal, the question how far the conception is extended to inanimate things by primitive races is one to which it would be hazardous to give any general answer. If the tendency to attribute all actions to a spirit were erected into an avowed principle, and consistently applied, everything capable of being conceived as a distinct object would become also the seat of a spirit. That this would involve much duplication and, so to say, overlapping, would present no difficulty to the animistic mode of thought, which does in fact frequently conceive a greater object as animated by one spirit, while the lesser objects which form its parts have each a spirit of its own. Thus, among the Chinese, "one of man's chief gods is the *Shen*, pervading the Earth as a single entity: and those which dwell in its several parts, its mountains, hills, rivers, meres, rocks and stones, are likewise his divinities" (De Groot, vol. iv. p. 325). The conception, if we try to think it out, raises questions of identity and of individuality which might puzzle us, but probably do not puzzle primitive man. Be this as it may, the tendency to people things with spirits in indiscriminate profusion is widespread if not universal in the primitive world. For numerous instances see Frazer, *Golden Bough*, vol. iii. p. 43 seq.; *e. g.* "The Mantras, an aboriginal race of the Malay Peninsula, 'find or put a spirit everywhere, in the air they breathe, in the land they cultivate, in the forests they inhabit, in the trees they cut down, in the caves of the rocks. According to them, the demon is the cause of everything that turns out ill. If they are sick, a demon is at the bottom of it; if an accident happens, it is still the spirit who is at work; thereupon the demon takes the name of the particular evil of which he is supposed to be the cause'" (Frazer, 2nd ed. iii. 48).

---

[1] Ellis, *Yoruba-speaking Peoples*, p. 276.

[2] Stone-worship must be ranked among the most paradoxical developments of animism—a stone being to our minds the very type of the inanimate. Jevons (*History of Religion*, pp. 131–144) inclines to think that it is in most cases derivative, the stone having been originally an altar but admits (p. 137) that the worship of remarkably shaped rocks would belong to primitive animism. Sir A. Lyall (*Asiatic Studies*, First Series, p. 12) ascribes the primitive worship of stones in India "to that simple awe of the unusual which belongs to no particular religion." We have here something simpler and more primitive than animism itself, to which further reference will be made later. The next stage is that the stone is the dwelling-place of a spirit. At a higher stage it is connected by a myth with some "saint, demi-god, or full-blown deity." Finally, it may remain in a spiritual religion as a mere symbol. Sir A. Lyall "knew a Hindu officer of great shrewdness and very fair education, who devoted several hours daily to the elaborate worship of five round pebbles, which he had appointed to be his symbol of omnipotence. Although his general belief was in one all-pervading Divinity, he must have something symbolic to handle and address" (*Asiatic Studies*, First Series, p. 13). These would no doubt be the regular five stones "supposed to be instinct with the divine essence" of southern Brahmanism (Moore, *Hist. Rel.*, p. 347). For a discussion of the fetichistic and symbolic views of stone-worship, see also Tylor, *Primitive Culture* (ed. 1903), vol. ii. p. 160. Whatever its character, stone-worship as an element in early religion is widespread. De la Saussaye (*Manual of the Science of Religion*, Eng. Trs. i. 85 ff.) finds it among the South Sea Islanders, in Central Asia, among the Finns, Laps, Negroes, ancient Peruvians, Hindoos, ancient Hebrews, ancient Arabs, Greeks, Romans, in the Hebrides and in mediæval Europe, and while recognizing the blend, hard to distinguish, of the altar, the fetich and the symbol, is inclined to conclude that the safest explanation of the cult is the Tacitean "ratio in obscuro."

[3] Wilson, *J.R.A.S.*, 1843.

It is characteristic of early thought that fundamental distinctions like those of mind and matter are not yet clearly drawn. Men, animals, plants and the inanimate world are therefore much more nearly on a level than they are for us. It is this which makes possible that mystic bond between a human being or a group of human beings on the one side and a non-human object on the other which, whatever its origin, is the essence of totemism. It is the same condition of thought which disposes men to approach nature in the same spirit and manner in which they deal with one another. If original mazdaism sacrificed butter to fire without conceiving it as anything but the material fire that its worshippers saw, this only shows that the process of distinction between a living thing that can be gratified by food, and a fire that can only consume it, had not begun. Yet implicitly the fire is already treated as living and understanding, and this "implicit" animism would then be merely the lowest stage of the development, and would grow into animism proper as soon as its implications became realized, so that in sacrificing to fire men began avowedly to treat fire as a living thing.[1]

---

[1] A term due to Mr. R. R. Marett, cf. *The Threshold of Religion*, ii. 14.

Animism in the narrower sense can only be attributed to a people when we have explicit information as to their modes of thought. But animatism can be readily inferred from their cult. If they make offerings to the sun, a tree, or a stone, they are treating sun, tree or stone like intelligent beings, whether they regard them as possessing separable spirits or not. If we allow ourselves to use animism in a generic sense to include all beliefs and practices which treat the inanimate, the vegetable, or the animal as if they were human, we shall find traces of animism all over the world, and in its way of merging fundamentally different classes in one we shall recognize a principle of the first importance in primitive cults.

To our minds worship can be paid only to a being higher than ourselves, and the "spiritual" expresses that higher sphere of being into which man enters by virtue of what is best in him and what is most removed from the material and the animal. Such conceptions as these underlie all the higher religions, but they are wholly foreign to animism. Essentially the cult of animism is not an adoration of a being higher than man, but a mode of influencing beings conceived as possessing powers which may be useful or harmful to the believer. And spirit, as animism conceives it, though certainly implying enough of intelligence to comprehend the meaning of a promise or threat, is far from implying a higher type of moral or mental power than that of the human "worshipper." We are accustomed to think of the rudest religions as anthropomorphic, and to say that man first framed gods in his own image. But in truth the majority of the beings worshipped by primitive man are not human, but something less than human. The distinctly evil agencies are more prominent than the good, for why should savage man trouble himself to please great spirits who are naturally benevolent? It is the bad spirit who will otherwise make himself troublesome that the savage is anxious to conciliate with the best of his store.[1] And the intellectual level is as low as the moral. The savage is confident in his power to deceive the spirit whom he addresses by methods which could hardly take in the savage man himself. The Naga propitiates a malignant deity by setting out for him a small fowl in a large basket. The god is deceived by the size of the basket, and distributes favours accordingly.[2] The ghost of a mother who would carry off her child is deceived in the Banks Islands by a piece of banana trunk which is laid on her bosom in her grave.[3] Disease demons may be diverted by similar methods. Thus, in an epidemic, the Dyaks set up wooden images at the doors of their dwellings, that the disease may carry them off instead of the living people.[4] When the Kaffir is hunting an elephant, he begs the elephant not to tread on him—surely as curious a confusion of ideas as is to be found in primitive thought—for, on the one hand, the elephant's soul is held to have intelligence enough to understand the petition, and, on the other hand, it is supposed to be so stupid as to be taken in by the request when the petitioner is all the while seeking to take his life. The Samoyeds are more crafty, for they tell the bear that it was the Russians who killed him; and the North American Indians spare the rattlesnake, risking the physical evils which they know, in dread of the vengeance which the rattlesnake's spirit would take on them, and which they do not know and cannot measure.[5] The crude conception of the spiritual which these cases vividly illustrate goes far to determine both the objects and the methods of animistic cults. Animal-gods and man-gods belong to the animistic level of religion, because it is only at this level that animals or men can be the objects of a cult without being regarded as the representations or embodiments of something far higher than themselves. Animism does indeed regard them as embodiments of a spirit, but this spirit is not essentially superior, either morally or intellectually, to the animal or man in which it dwells. The Toda addresses a cow, chosen by descent or by consecration to be the head of the herd, as being herself a goddess: "How fair was thy mother! how much milk she gave! Be not less generous! Henceforth thou shalt be a divinity among us. . . . Bear a thousand calves!"[1] So sacred is this divinity that the chief milkman is himself a man-god. Yet the animal which is worshipped is also unhesitatingly turned to human uses. Often the god may, with due observance of the proper solemnities, be killed and eaten by his votaries. Thus, among the Australians, at the Intichiuma ceremonies a man not only may, but must, eat his totem, or the supply would fail.[2] The Gilyaks of Eastern Siberia bring up a bear cub with divine honours. Fish, brandy and other things are offered to him in every house. People prostrate themselves before him, and his entrance into a house confers a blessing, but he is also teased and worried. After visiting every house in the village, he is shot dead with arrows and eaten.[3] In such practices, illustrations of which might be indefinitely multiplied, the savage is, in his way, getting the best of both worlds. He needs the animal's flesh and is afraid of his spirit. Not only may the particular bear which he has killed have its avenging ghost, but all the bears may stand together in the blood feud and take vengeance on the murderer of their kinsman. So he pays honour to the individual bear slain, and through him to his fellow-bears. He comforts himself, in short, with a conception of the bear spirit which is intelligent enough to understand the show of honours and the words of cajolery, and stupid enough to let these make up to it for the hard facts of being killed and eaten.[4]

---

[1] Of the early Roman cults Mr. Warde Fowler writes: "Vesta seems to be the fire, Penates the store, or at least spirits indistinguishable from the substance composing the store" (*Religious Experience of the Roman People*, p. 116). Which precisely they were could only be told if we had contemporary literature or art to explain the precise manner in which the cult was understood. On the other hand, that they were not personalities "perfectly distinct from the object" in which they resided is quite clear (*ib.*). The passage illustrates the relative sharpness of the upper limit of animism (see below, p. 402) and the vagueness of the lower boundary where it passes into animatism.

---

[1] For illustrations, see below, p. 425.

[2] Godden, *J. A. I.*, xxvi. 187.

[3] *Golden Bough*, 2nd ed. vol. ii. p. 345, where numerous instances of the same kind are given. The widespread substitution of models for real food, implements, etc., in sacrifices to the dead is hardly to be regarded as a deception—or, if so, rather as a form of self-deception—the model, pardonably enough on animistic grounds, being held as good a vehicle for soul-food, soul-money, etc., as a real loaf or a gold piece.

[4] *ib.*, 348.

[5] Tylor, vol. i. p. 467; Schoolcraft-Drake, vol. i. p. 232. Similarly the Western Eskimo, before setting to upon the stranded whale, would receive him with divine honours, harangue and compliment him (Reclus, p. 52).

The worship of men might seem intrinsically higher than that of animals. But in point of fact no distinction of principle severs the cult of man-gods in many primitive religions from that of animals as just described. The man-god of this stage must not be confused with the anthropomorphic deity of polytheism and the cruder monotheism. This deity is a spirit conceived as clad with human attributes. The man-god is an ordinary human being conceived as the incarnation of a powerful spirit or as possessed of magical powers. In the lowest grade he is merely a sorcerer, whose power is due to his relations with ghosts and other spirits. At a further stage of development he has marvellous powers of his own whereby he controls rain and sunshine, the winds and the crops.[1] Owing to the occult influence emanating from him, this mighty being becomes so full of danger to his people that his movements and actions have to be closely restricted. To drink of his cup or eat the remnants of his food is fatal. His touch and his glance are deadly. His misbehaviour may involve his whole people in ruin. In consequence he is surrounded with all kinds of precautions, and he ends by being a mere puppet in the hands of priests. Thus the Egyptian Pharaoh, a typical man-god, is described by Diodorus[2] as hedged round both in his public and private life by watchful sacerdotal control which minutely prescribed to him the order of his actions. Similarly at Babylon, though the king was not strictly a god, the whole country suffered for his faults and he had to observe taboos—*e. g.* avoiding meat on the seventh day—which apparently concerned no one else.[3]

---

[1] Reclus, p. 218.

[2] Spencer and Gillen, vol. i. p. 168. When the Australian does not eat the totem himself, it is by his permission that others do so. In fact, he is held responsible for maintaining the supply of his totem for the benefit of other totem-groups (Spencer and Gillen, vol. ii. p. 160). Strictly, the totem should not be spoken of as a god, the conception being magical rather than religious, but the point here is the ceremonial eating of that which is ordinarily sacred.

[3] *Golden Bough*, vol. ii. p. 380. For many other instances of killing and eating the divine or sacred animal, see the same work, vol. ii. pp. 302, 366, 396, 435.

[4] The slain animal, if properly treated, may even invite others to come and be killed. The Orinoco Indians, having killed an animal, pour a little liquor into its mouth, "that the soul of the dead beast may inform its fellows of the welcome it has met with, and that they, too, cheered by the prospect of the same kind reception, may come with alacrity to be killed" (*Golden Bough*, vol. ii. p. 402). Many similar instances are given by Mr. Frazer.

Lastly, the man-god may be the incarnation of a spirit which lives independently of him. Of such a type the most familiar instance to us is the everlasting Buddha of the Thibetans. In this idea of incarnation death and re-birth necessarily play an important part. The gods themselves die in the philosophy of animism, for death is only the migration of a spirit. Sometimes it is its migration to better quarters, and when this flesh that is now the spirit's habitation becomes old and weak or is doing its work ill, the worshippers of the god facilitate his migration by the destruction of his temporary tabernacle. The man-god, in fact, may be killed and even eaten like any ordinary human being.[4]

[1] For instances, see *Golden Bough*, 2nd ed. i. 139, etc.

[2] Diodorus, i. 70, 71.

[3] Jastrow, *Religion of Babylonia and Assyria*, pp. 375–378. For many similar instances, see *Golden Bough*, i. 313, 314.

[4] See *Golden Bough*, 2nd ed. vol. ii. p. 6, etc. A special case is the selection of a prisoner, criminal or slave, to act as the incarnation of a deity. He then becomes a temporary man-god, receives honours and sacrifices, and is finally slain and perhaps eaten. The idea is apparently to strengthen the spirit—who is here some nature-god—by sacrifices, perhaps to bind him more closely to his worshippers by the partaking of his flesh, and finally, by

This unceremonious treatment of the object of worship is partly due to the conception that the body in which the spirit is incarnate is not the spirit itself. But the condition under which alone it can arise is that the object of a religious cult is not yet an object of worship as we understand the term. The spirit of the sacred animal does not rise above the animal. The god in man has powers which ordinary men have not, but he is not spiritually (as we use that term) a higher being. The spirits of early religion may be abused or coerced if they do not do their duty. The Greek youths whipped the statue of Pan if he did not give them good hunting. The Chinese emperor was supreme over all spirits except that of heaven, and regularly promoted or degraded them in rank according to their performances.[1] The Ainu abuse their household gods when a death occurs, as is shown in a vivid description by Mr. Batchelor of the scene in a house on the death of a child.

"One old man was calling on the goddess of Fire to help, and threatening never to worship her again if she did not keep warmth in the child's body. Another person was looking out of the east window and accusing the goddess of Fire to the Creator, of not attending to her duty. A third was in a towering rage, and, facing the south-east corner of the hut, was telling the guardian gods that they were an extremely bad lot, and deserved never to be worshipped again." [2]

It is not necessary to multiply instances. The quasi-material spirit of animistic worship, whether incarnate in stocks and stones, in trees, animals or men, or roaming disembodied as a ghost, demon, or genius, is not intrinsically a higher being before whom man must prostrate himself, but more often, if anything, a being of a lower order, and in any case one who is to be managed as occasion serves, by prayer, entreaty, deception, threats, or force applied as we apply them to actual men and animals, so that when one fails another is tried.

Such, then, is the character of the primitive conception of spirit. In its most definite shape it is a double of the common objects of perception, conceived on the one hand as a material substance capable of exerting force and having force applied to

---

slaying him, to give him a new and more vigorous life. The subject is exhaustively treated by Mr. Frazer. See the places quoted, and, in particular, vol. iii. p. 134, for the killing of the god in Mexico.

[1] For examples, see Douglas, *Society in China*, pp. 5–7. The honours paid to ancestors for the exploits of their descendants depend on the same conception, since it is the business of an ancestral spirit to watch over his family and guard its fortunes.

[2] Batchelor, *The Ainu of Japan*, p. 217.

it, and on the other hand as feeling and thinking like a rather stupid man, and open, like him, to supplication, exhortation, or intimidation—a standing contradiction in which the categories of mental and material are hopelessly intertwined, in which mere functions and qualities become substantial beings, and, finally, by a crude induction, the same spiritual agency by which men explain their own behaviour and that of their fellows is imputed also to animals, plants, and inanimate nature—to the wind and waves—the stocks and stones. In its less definite shapes these contradictions do not appear. But that is not because they have been faced and surmounted, but rather because the first step of distinctly conceiving the elements which have to be reconciled has not yet been taken.

3. One way of treating things in the primitive world, then, is to act as if they were alive, and indeed in the end to regard them as inhabited by spirits. Another way is to treat things as united by certain occult connections—connections, that is, which are neither apparent to the senses nor legitimately inferred from data of sense, and yet present no problem to primitive man. Such occult connections are the instruments of magic—not magic itself, but, so to say, the *materia magica.* They do not involve spirits, and in using them the magician is free from that particular element of uncertainty which is derived from the caprice of any voluntary agent.[1] But it is a mistake to infer that they imply any theory of mechanical causation or of the uniformity of nature. Strictly, they imply no theory at all as operating in the mind of primitive man, but only a certain way of forming ideas or of guiding action in the service of practical needs. The anthropologist can analyze out the principle implied—that is, he can formulate a law of causation which, if true, would justify the procedure, and which, being, in fact, false, renders it void. This it is convenient to do for the better understanding of the matter, and we shall immediately distinguish such laws. But as "laws," it cannot be too clearly understood, these are the work, not of the primitive magician, but of the anthropologist, and they are of use only to exhibit the nature of the confusion on which magic rests.

---

[1] The modern theory of law has been built up in opposition to one of causation by arbitrary will. Hence it is natural for us to impute notions—at least implicit notions—of law to any theory of practice which dispenses with will. But in application to men who have no such history behind them this is a misleading inference. The magical process has no automatic certainty. This is proved by the constant piling of one process on to another, and by the necessity for some special power inherited or acquired in the magician for all important cases (see below, p. 398).

This being understood, we may distinguish three main "principles" or laws underlying magical processes. We have, first, what is now called Contagious Magic.[1]

Its principle may be roughly formulated, "What is done to my belongings is done to me"—or more precisely, if two things are closely connected (as *e. g.* by being parts of one object) they will, even when dissevered, remain so allied, so much in "sympathy," that to affect one of them is to affect the other.[2] The most familiar instance is the use of hair-clippings and nail-parings to work evil on the man to whom they belonged. Another is the practice of heating a weapon which has made a wound in order that the wound may remain inflamed, or conversely, of keeping the weapon clean that the wound may not fester. A third is to operate on the food left by a man.[3] A fourth is to attack his shadow. A fifth is to possess his name, for the true name is the man. It is impossible to say how primitive man actually conceives the connection in these cases, for it is of the essence of the matter that he has no clear conception at all. But if we analyze out the principle implied—that is to say, the principle which, if it were true, would justify the procedure, and which, being in fact false, makes the procedure void—it is this—that the continuous identity which once connected the two things still in some sort persists. The clipped hair was once part of the man and his identity persists in it. The sword and the wound were two aspects of the same fact and their union remains. If this were true, sympathetic magic would be a genuine art, and because it is not true, sympathetic magic is a spurious art. In this sense the doctrine of a persistent unreal identity is the implied principle of sympathetic magic.

A second form of magic rests on another distortion of the principle of identity. If you cannot get hold of any belongings of your enemy you can at least make a likeness of him. You may destroy him, for instance, by melting or sticking pins into a wax image of him. With very different intent, though by essentially the same method, primitive people in many parts of the world seek to make rain by squirting water, or to produce sunshine by kindling fires, or fertility by a representation of the processes of growth.[1] Here the implied principle—understanding the term once again as above—is that like things or like processes are the same. In making rain on a small scale we are setting up a process which extends further and has to do with the production of rain generally, or, at any rate, on a greater scale. In slaying one bear, again, or in honouring one bear, we are slaying or honouring Bear—the bear that is in all bears; we are incurring or averting a feud with bears in general. It will help us to understand this sort of identification if we revert for a moment to the creed of totemism, the idea at the base of which is, as we have seen, that there is an occult connection between an animal or plant and the human beings of a clan or tribe, such that what they act or perform ceremonially the totem will do likewise in real earnest. The totem is in some sense—in what sense they certainly could not tell, and if we try to define the conception we shall modify it by the very process of making it definite—but it is in some sense incarnate in them. The Bear is in all bears, all four-footed bears and all human bears. But what is the Bear itself? To the North American Indian it is often a Big Brother of the bears; another individual, in short, and something on its way to becoming a god. But in a lower stage the totem has no need of so much individuality, for the savage has not got so far in the endeavour to think out the problem of Identity in Difference. Every individual bear, two-footed or four-footed, is alike the Bear, and what one does or suffers all do or suffer. Further, the identity may be fortified, as it were, by introducing the other principle of connection. For, since things that are once joined are always connected, an exchange of blood makes two men brothers. Joining in the same meal has a similar effect, and therefore what one suffers the others, too, will feel, not through moral sympathy but through a purely physical causation. Applying this to the totem, how can we identify ourselves with him better than by killing him? We eat the flesh of the bear and the Bear is within us. Yet we have not injured the totem, for the Bear still lives—in other bears and in us. The species survives, though one individual is sacrificed.

---

[1] *Golden Bough*, i. 52, etc. With regard to this name it must be borne in mind that in the cases in question there is no present contact. There has been contact or some such connection in the past, and in consequence an occult sympathy remains. Contagion, in the more ordinary sense of the propagation of a quality from one thing to another by contact or proximity, appears in the third group of cases distinguished lower down.

[2] See *Golden Bough*, i. 9, 49.

[3] Or an excrement (Spencer and Gillen, I. 547).

These two forms of magic, distinguished as Contagious and Homœopathic, are grouped together as Sympathetic. That is, they both depend on an occult Sympathy—in other words, a very crudely conceived identity between things and processes that are really distinct. The third set of magical ideas are simpler, and turn on a primitive conception of the qualities of things. Powers and influences exist in things, and are the basis of their qualities and behaviour. Like spirits, they are separable from the things to which they belong. They can be withdrawn by charms; they can be transferred to other things. A barren fruit-tree must be a male. A woman's petticoat placed upon it transfers to it the feminine quality, and it becomes fruitful. Chinese people, when advancing in years, have their grave-clothes prepared by young girls, because part of their capacity to live long must pass into the clothes and so put off the moment when they will be required.[1] Conversely, when the coffin is being nailed down the hammer is bound up in red cloth to prevent bad influences passing into the hand.[2] Now conceptions of this sort seem, in the first place, to be merely generalizations, which are too extensive and therefore faulty, from an ordinary experience. Some qualities or characteristics of things are in a sense transmissible. Death as such is not infectious, but small-pox is. The touch of a pregnant woman will not impart her fertility, but her warm hand will impart warmth. But there is probably a little more in the matter than a too hasty generalization. There is the conception of a quality as something quasi-substantial, something, in short, bearing a family resemblance to the spirit from which we have to distinguish it. When sins are loaded upon a scapegoat and driven away into the wilderness, when a toothache is nailed into a tree, when a disease is extracted in the form of a magic stone, or passed into a third person, when evil influences are brushed or whipped off a man—in all such cases the quality is treated as something that you can almost pick up and carry about. It is at least as substantial as vapour, and in some cases it really becomes a spirit. When the Melanesian regards a stone with little discs in it as "good to bring in money," it is clearly because it has the character of money stamped upon it. But this character they ascribe themselves to an indwelling spirit which they conciliate—the magical quality passes into the spiritual.[3] The third basis of magic may, in fact, be regarded as a spirit that has become attenuated into an "influence," or as an "influence" that has not developed into a spirit. It thus forms a connecting link between magic and animism.

---

[1] Cf. the symbolic processes combined with invitations to the animal in the totemic ceremonies whereby the Australians secure a full supply of the Witchetty grub (Spencer and Gillen, I. pp. 172 seq. and 206).

4. The other two forms grouped under Sympathetic Magic in the wider sense are not so closely connected with animism. Yet

---

[1] De Groot, i. 60. [2] *ib.*, p. 96. [3] *Golden Bough*, 2nd ed. i. 45.

they belong in the main to the same mental level. We find in the primitive mind when it begins to theorize two tendencies which may be regarded as in a measure complementary. On the one hand, it tends to take the characters and attributes of things, processes that go on in things, thoughts about things and the words in which thoughts are expressed, and to turn them into objects, substantial as the things themselves, having, in fact, a mode of existence very like the things. The categories of substance and attribute are not yet distinguished. Of this confusion personification is merely the extreme case, the living person being simply the most concrete and many-sided of objects. In this tendency, then, we have the basis of the spirits of animism and the occult essences and powers of magic. On the other side, the primitive mind equally fails to keep different objects distinct. One conception melts readily into another, just as in primitive fancy a sorcerer turns into a dragon, a mouse, a stone, and a butterfly without the smallest difficulty. Hence similarity is treated as if it were physical identity. The physical individuality of things is not observed. The fact that a thing was *mine* makes it appear as though there were something of *me* in it, so that by burning it you make me smart. The borders and limits of things are not marked out, but their influence and their capacity to be influenced extends, as it were, in a misty halo over everything connected with them in any fashion. If the attributes of things are made too solid and material in primitive thought, things themselves are too fluid and undefined, passing into each other by loose and easy identifications which prevent all clear and crisp distinctions of thought. In a word, primitive thought has not yet evolved those distinctions of substance and attribute, quality and relation, cause and effect, identity and difference, which are the common property of civilized thought. These categories, which among us every child soon comes to distinguish in practice,[1] are for primitive thought undistinguished, and this indistinctness is the intellectual basis of animism and of magic.

This indistinctness finds its general explanation in the stage of psychological evolution attained by primitive man. The generic function of mind in life is to establish articulate connections between the scattered portions of experience, and so enable its possessors to learn from the past how to provide for the future.

---

[1] I do not mean that the child or the average unthinking man is familiar with these conceptions in the abstract, but that his experience is so organized under the influence of tradition, especially in the form of language, as to fall with general, though not unvarying, correctness into the pigeon-holes to which these terms correspond.

By its success in performing that function the stage of growth reached by the mind of any given being or group of beings is to be judged. The higher animals have apparently reached so far that they can perceive the objects that surround them in their temporal and spatial order, and use the result of this perception in guiding their own actions so as to produce or avert particular effects. If this is so, they certainly in a sense apprehend many of the attributes, actions and relations of things. In some sense my dog, when he is thirsty, knows that there is water in a jug, that I can pour it out for him, and that he can get me to do so by attracting my attention and signifying his wants. That is to say, his behaviour is adapted to the presence around him of certain persons and things with given attributes, related in a particular way, acting in a particular way. He knows this after some fashion, but we do not take it to be precisely man's fashion. Where, then, do we suppose the difference to lie? The dog can in some way differentiate the "solid" jug from the "liquid" water, for we see that he treats them differently. But we suppose it to be peculiar to the man that he interests himself in the generic qualities in point of which these things differ, and invents for them the names "solid" and "liquid." To discover and define these qualities the human mind breaks up its experiences into their elements, and at the same time and in the same process brings widely separated experiences together. The "solid," for instance, is something common to the jug, the house, the road, and distinct from the air and the water, distinct also from the shape and other qualities of the jug. This joint movement of comparison and discrimination breaks up the perceptual world into its elements and builds up out of them an order of ideas. Every such idea is expressed in a general term or name, and as there is a name for each thing, so there is a way of expressing each of its functions, attributes, relations. Our everyday experience thus translated into ideas falls into certain familiar categories — Things and their Attributes, Persons and their Actions, Functions, Relations, Substances, Causes and Effects. But these categories do not at once emerge into clear consciousness. The mind uses them long before it is clearly aware of them. Or, more strictly, it works by rules corresponding to these conceptions, sorting experiences in a manner which accords with them, though it knows them not. It recognizes actual substances (stones, hills, men, horses) and their attributes or actions (hardness, height, sagacity, swift movement) before it has ever heard of Substances or Attributes or Relations as general terms, and a clearheaded man who is innocent either of grammar or logic may yet move among the objects of experience without confounding any of these categories. Thus, below the stage at which the mind is clearly aware of the elementary conceptions under which rational experience is ordered, there is a stage where it works according to the rules to which these conceptions, when known, are found to lead, though without consciousness of the rules or the conceptions. This is the stage of "common sense." But below "common sense," again, is a stage in which the rules themselves are not yet efficient in their operation, at which the mind is not only unconscious of the categories, but fails practically in sorting experiences so as to accord with them, in which objects of thought belonging to different categories are not held apart but pass into each other, what is now a substance becoming at another moment a relation, while a relation or an attribute becomes a substance, or one relation is confounded with another. At this stage, though "general" ideas are already formed, they are loose in meaning and wavering in application. And this is the natural result of the methods by which they are formed. Developed thought knows certain rigorous methods of induction from experience, as well as certain definite principles of the analysis and synthesis of ideas whereby it forms new conceptions or checks those that it has formed. Primitive thought knows nothing of such safeguards. In the lowest strata of thought-operations we form ideas by casual association, drifting where the current of mental tendency leads us, for the most part, under the spell of the emotional or practical interest. Instead of the rigorous analyses and constructions of the logical mind we have the unregulated movement—the resultant expression, probably, of the unsifted mass of experience—carrying us whithersoever it will. As to the test of experience, if used at all, it is applied in the form in which any chance instance that appears to confirm the mental prepossession is taken for proof, and if an instance to the contrary is regarded at all it is merely as the starting-point for some hypothesis to explain it away. Indeed, the bare conception of truth or falsity scarcely exists. The world of ideas is largely a world of make-believe. If the child's doll or the savage's ghost cannot really eat the food offered them, the human playmate or worshipper is quite content to eat them himself "for" the other. The ideas make their junction, as it were, in their own world, and out of this the child savage derives the mental comfort he requires. As to stern truth, she moves in a cold, hard world best left untrodden. In a word, confusion of categories, crude induction, uncritical reasoning, and childish make-believe go to determine the character of the general ideas formed in the lower stages of human thought, and these conditions account for animism and magic.

5. *The Supernormal and Mysterious.*

For us the distinction of the natural and supernatural is familiar from boyhood. There is an ordinary course of things constituting the normal life of man and the regular process of the world. Above and beyond it is God in his heaven, perhaps sustaining it all, certainly capable of intervening and altering it as he chooses. Philosophy and science struggle back from this dualism towards the idea of a single order, but for early thought the clear division of two orders had not arisen. There was no supernatural properly so called, because there was as yet no established order of nature. In the notion of the spirit as such there was nothing supernatural. It was rather the simplest way of formulating the facts of life and death, sleep and dreams, disease and recovery. Nor were the "occult" connections of magic anything out of the way. On the contrary, they formed themselves spontaneously on the line of least mental resistance. To make rain by squirting water was not necessarily to call supernatural powers into play, so as to connect things that were very remote, for the things did not seem remote but almost the same. Nevertheless, for primitive as for all men, there is a deep distinction between the known and the unknown, and of the unknown there is that which impresses primitive man as abnormal, strange and awesome, gets itself a name, and figures in the account of any natural event that is striking or terrifying, any power, personal or impersonal, that is extraordinary, any art that is secret. This power may attach to the skilled magician, and explain why his arts succeed while others who may use the same *materia magica* fail. Thus, the Melanesian wizard has mana, by which he affects things at a distance. The chief's supremacy in the same region is due to his mana. He may be elected because he has mana attributed to him, and he succeeds to his office because mana is conferred on him by the imposition of hands. Mana once acquired is a very useful possession. Its owner may pass it on to another. He may throw it into a material object, which becomes then a source of danger. He may use it, and does habitually use it, to secure his property. By this simple means, for example, he solves the problem of closing a public right of way and annexing it himself. If the taboo is broken the evil consequences are averted by a present to the man who put it on—the human spirit, after all, controlling the magic influences. Spirits, too, may have mana. Indeed a regular source from which it is derived is a ghost or other spirit,[1] and the spirit with mana is supernormal in power and mysterious and fearsome in action. Thus the spirit that has mana is the object of something like a religious emotion, which does not pertain to spirit as such, and the man who can put mana into familiar processes and make them preternatural successfully is a wizard. Now conceptions analogous to mana are widespread. Thus among the Sioux peoples everything mysterious or powerful is Wakan.[2] The Omaha call the Christian God Wakanda,[3] the sun was worshipped as Wakanda, the Thunder-being invoked as Wakanda. The sacred pole was "like Wakanda,"[4] Wakanda hated the murderer, and even those who ate with him,[5] and the issue of blood pertained to Wakanda.[6] So, again, among the Iowa, the Sun and Wind and Thunder-being are Wakantas,[7] and among the Dakota and Assiniboin all life and everything that has power is Wakan.[8] The corresponding terms among the Algonquin were Oki and Manitou, and among the Iroquois Oki and Orenda.[9] In Negro Africa we find among the Abatua an impersonal evil influence, Likundu.[10] A man has Likundu as elsewhere he may have the evil eye. Among the Bambala, if a man is fortunate in his enterprises, if many of his enemies die or are ruined without apparent natural cause, he has a powerful Likundu, a quality of which no material trace can be found at his death.[11] To the Pygmy a mysterious death, a strange sound by night, and even an accidental injury, are all "oudah."[12] Terms such as these range in meaning from the profoundest mysteries of life and death to the trivialities of personal luck or ill fortune. They give a name and a local habitation in the world to the unintelligible, the unpredictable, and more particularly to the dreadful and mysterious.[1] The mystery may be magically conceived—mana, for instance, is very like one of the half-material qualities of magic—or it may be merely named and felt without being further defined. But in any case here is an expression for the emotions of awe and wonder that in all stages contribute to the make-up of the religious consciousness. The recognition of mystery is not religion, but it is contributory to religion.

---

[1] Codrington, p. 118. Conversely, in the Solomon Islands, only those who possess mana become worshipped as ghosts (p. 125).

[2] Dorsey, *A Study of Siouan Cults* (*R. B. E.*, xi. 366).

[3] *ib.* The application seems to have been made first by the missionaries.

[4] *ib.*, pp. 376, 382, 412.

[5] Dorsey, *Omaha Sociology*, *R. B. E.*, iii. 369.

[6] *Omaha Sociology*, p. 267, quoted in Marett's *Threshold of Religion*, p. 29.

[7] *ib.*, p. 423, 424.

[8] *ib.*, p. 432.

[9] Brinton, *Mystery of the New World*, p. 45; Hewitt, *Amer. Anth.*, 1902, p. 37; Marett, p. 130.

[10] *Monographies Ethnographiques*, ed. J. Halkin, i. 101.

[11] The imputation may be dangerous (Van Overbergh, *Mono. Ethnogr.*, i. 262). The author thinks the power may be represented by certain kinds of pebbles. If so, it resembles the Likundu of the Mangbetu, which is strictly a pebble "dans la vessie" (*ib.*, iv. 366).

[12] Marett, *Threshold of Religion*, p. 100.

6. *Myths, Culture Heroes, and Creators.*

Story-telling is an art which primitive man enjoys as much as his civilized fellows, and has had its share in peopling the world with spirits and heroes. We cannot expect to trace the origin of every myth in detail, for we cannot set bounds to human fancy. We can only see in general how the tales of a people reflect the general character of their ideas, and how, accordingly, primitive myths are full of magic and animism and mana, and all the elements of primitive thinking. In particular, we can see that an early method of explaining facts of nature or customs of man is that of telling a story about them and how they were set going in the past, by some personage of the by-gone times. This myth-making is in full vigour among the rude tribes of Central Australia. Why has the Echidna spines upon its body? Because in the Alcheringa there lived an Echidna man who for an outrage on sacred ground was pierced with spears. This was the destruction of the man himself and of his totem kindred, who have never since been re-incarnated in man but only in Echidnas with spears sticking out of them.[2] It is characteristic of these tales that what happens once happens always. The feature which an animal acquires it hands on for ever to its whole species. In fact, the "principle" of tale-telling as the explanation of natural processes seems to be once again that slippery identification of one and all which we found underlying imitative magic and totemism. If so, the primitive myth, so far as it serves a purpose in primitive religion, still rests on confusions analogous to those already examined. It also implies that capacity for freely imaging persons, situations and actions on the analogy of experience which all races and all levels of culture share alike. By virtue of his myth-making, the savage can people the world, not merely with spirits and powers, but with persons, heroes or monsters with a definite character and a history, with wives and children, loves and hates, wars and schemes of policy, all in a world of their own upon the mountains, beneath the earth, or in the sky.

---

[1] Marett, *op. cit.*; cp. his first essay entitled "Pre-animistic Religion."

[2] Spencer and Gillen, I. 398.

Where the mythical being comes into relation with the origin and life of nature or with the customs and destinies of man he may be said to belong to religion, and in quite the lowest levels we find, in fact, creation myths connecting the origin of the world with mythical beings of the "Great Long-Ago." For example, the Central Australians held that in the Alcheringa two beings arose out of nothing in the western sky and carved men out of imperfectly shaped creatures, between animals and men.[1] According to the Kaitish tribe a spirit-being named Atnatu arose in the sky before the Alcheringa. He made himself and has another sky and sun which are not ours. The stars are his lubras. He had sons and daughters in the sky, but they gave him no Churinga, so he threw them down to earth. He is angry if the bull-roarer is not sounded at the initiation ceremonies, and once dragged a number of boys up into the sky and ate one—but the flesh was not good.[2]

Culture and creation myths are common throughout California. In the North we have culture heroes. In the Centre (which includes some of the lowest tribes) we have myths of the creation of the world and mankind, and it is said that a "lofty conception" of the Creator is sometimes found, though marred by the figure of the tricksy Coyote, who half assists and half thwarts him.[3] Among the Columbian peoples we find "transformers," who are responsible for the existing order of things, *e.g.* among the Nootka, two beings descended from heaven and transformed semi-human beings into men.[4] Among the Bella Coola, four deities help the raven to liberate the sun. One of them made man, gave him the arts, and still adds to his favours.[5] All the Coast Salish believe that the Great Transformer will some day descend from heaven again and punish the bad.[6] In South America, the Paressi hold that the first woman lived in a kind of chaos. Living things sprang from her, and then man, and finally—last word of creation—the Paressi.[1]

---

[1] Spencer and Gillen, p. 388.

[2] *ib.*, ii. 498.

[3] Kroeber, "Religion of the Indians of California" (*Univ. of Calif. Pub. Tr.*), p. 343. In the northern half the creator is anthropomorphic, or if not is imaged in the Coyote. In the southern half the creators are animals with the eagle as chief. In southern California there are no creation-myths, but tales of early wanderings and the founding of institutions. Professor Kroeber's account does not altogether agree with that of Powers, who writes that, except for a few tribes in the North, "I am thoroughly convinced that the Californian Indians had no conception whatever of a supreme being." Their real belief was in the Coyote, while the Great Man or Old Man above was a mere modern graft acquired from the whites (*Tribes of California*, p. 413).

[4] Boas, *B. A.*, 1890, p. 595.

[5] *ib.*, 1891, p. 420.

[6] *ib.*, 1890, pp. 579, 580.

7. These creation myths, running down as they do to the lower strata of culture, raise at once the question whether the creators should not be regarded as supreme gods, and whether such a belief is an integral part of savage religions. Now the existence of Great and Good Spirits is certainly reported among many primitive peoples, but three questions have to be settled before we can determine their place in primitive religion: viz. (1) how far are these reports trustworthy, (2) how far, when the Good Spirit really exists, is it an importation from Christianity or some other civilized religion, (3) how far is the Good Spirit, when recognized, an object of worship, and therefore an integral part of religion?

The savage races among whom Great Spirits are principally found or supposed to be found are the Red Indians and the Australians. Especial stress has been laid by some writers on the case of the Australians on account of their extremely low grade of development. But recent research seems to have established definitely that at least among a large proportion of the tribes there is nothing comparable to the worship of a divine creator and sustainer of all things. With regard to the natives of Central and Northern Australia, Messrs. Spencer and Gillen have now shown that while the Alcheringa ancestors had superhuman powers, there is no instance of any being regarded as a deity. There is no idea of appealing to them for protection nor of propitiating them, except in the case of a mythic creature called Wollunqua among the Warramunga tribe, who is distinctly regarded, not as human, but as a snake. Further, the natives from Lake Eyre to the far north and east to the Gulf of Carpentaria "have no idea whatever of the existence of any supreme being who is pleased if they follow a certain line of what we call moral conduct, and displeased if they do not do so."[2] Among the tribes of South-Eastern Australia religious ideas as well as social customs are somewhat more advanced. But here again, what has sometimes been taken for a supreme god appears, when the evidence is put together, rather as a "venerable, kindly headman of a tribe, full of knowledge and tribal wisdom, and all-powerful in magic, of which he is the source, with virtues, failings, and passions such as the aborigines regard them."[1] Once a chief on earth, he or his spirit has now ascended with his people to the sky and rules them there, retaining some measure of interest in the doings of the tribe on earth. He is, in fact, a spirit like the other spirits of men, but greater and more powerful.[2]

---

[1] Von der Steinen, *Unter den Natur-Völkern Central-Braziliens*, p. 437. Creation myths are found in people so primitive as the Semang and Sakai, but the theistic element is thought to be borrowed (Martin, p. 935).

[2] Spencer and Gillen, II. p. 491.

The other chief group of primitive people who have been held to believe in a divine creator are the North American Indians. But in this case also investigation has rendered it probable that the Great Spirit is either (1) a misunderstanding, or (2) borrowed from the whites, or (3) an anthropomorphic nature-god. The Algonquin term for spirit, *manitu*, had a general application, and was partly misunderstood by missionaries and partly used by them as a stepping-stone to the idea of God.[3]

The Sioux Wakan and the Iroquois Orenda have given rise to misapprehensions. None of them, as we have seen above, were personal terms. A god might be Wakanda, but Wakanda was not a god.[4] Creation myths, however, are frequent. The Sioux story of the creation of man may be taken as a sample—

> "Before the creation of man, the Great Spirit" (whose bird-like tracks are yet to be seen) "used to slay the buffaloes and eat them on the ledge of the Red Rocks. . . One day when a large snake had crawled into the nest of the bird to eat his eggs, one of the eggs hatched out in a clap of thunder, and the Great Spirit catching hold of a piece of the pipe-stone to throw at the snake moulded it into a man. This man's feet grew fast in the ground, where he stood for many ages like a great tree, and therefore he grew very old: he was older than a hundred men at the present day; and at last another tree grew up by the side of him, when a large snake ate them off both at the roots, and they wandered off together; from these have sprung all the people that now inhabit the earth."[5]

---

[1] Howitt, *Native Tribes of South-Eastern Australia*, p. 500.

[2] Mr. Howitt does not regard such a cult as equivalent to ancestor worship. The term "father" used in addressing such beings expresses properly a tribal, not an individual relation, and towards old men is used as a term of respect (*ib.*, p. 507).

[3] Tylor, *J. A. I.*, xxi. 284–288. Good and bad spirits are often found among the South American Indians also, but accompanied with stories of the deluge, the creation of Eve, etc., which betray their origin.

[4] See especially Dorsey, *Siouan Cults*, p. 365, etc. Two Omahas indeed said that their ancestors worshipped a supreme Wakanda, but did not know how or where. Cf. Brinton, *Myths*, p. 48.

[5] Catlin, *North American Indians*, ii. 168.

Here the Great Spirit is conceived in bird form and the whole story is in the crudest style of myth-making. In other cases the Great Spirit is merely the sun or spirit of the sun—as the following hymn shows—

> "At the place of light,
> At the end of the sky,
> I (the Great Spirit),
> Come and hang. Bright Sign.
>
> . . . . .
>
> I am the living body of the Great Spirit above,
> (The Great Spirit, the Everlasting Spirit above).
>
> . . . . .
>
> I illumine earth,
> I illumine heaven."[1]

Many of the expressions in the hymn, taken singly, would appear to describe a supreme spiritual being comparable to the God of civilized religion, but, as the context shows, they are, in fact, applied to the sun. So easy is it for one form of religion to use for its purpose the terms and expressions familiar to another of quite different rank. Mere indistinctness simulates unity in a misleading way. The Indian spirits are so little individualized that they all seemed one to the inquirer. The marked individualities of Polytheism were not yet attained—still less were they overcome and merged in the unity of a single divine nature.[2]

Lastly, where great and good spirits are recognized in savage religion we constantly find that they are in practice neglected for the active, present, and possibly dangerous spirits of the immediate surroundings of man. The evidence on this point comes from all parts of the world. The good spirits, the Algonquin held, could only do good. It was the bad ones that needed propitiation.[1] The Dakotahs knew little about what the Great Spirit would do. All the fear they had was of the spirits of the departed.[2] The Caribs recognized a higher spirit, but paid him no honours.[3] Of a supreme spiritual creator, distinct from a natural object such as the sun, who is also the central object of worship, I have found no recorded case in the uncivilized world.

---

[1] Schoolcraft, i. 398.

[2] Cf. De la Saussaye, *Manual of Religion*, vol. i. p. 273. A race may recognize one god because it has not imagination enough to differentiate distinct objects and functions, or because it has attained a measure of insight into the unity which runs through all differences and joins divers parts into one framework. The results would agree on one point, but they would belong to wholly different mental grades. Some such misconception perhaps influences Australian travellers, the vague statement of the natives that some mystical being made "everything" being taken with the fulness of connotation which the word possesses for the civilized mind. The Australian means rather, "all the things you see about you"—things generally, without any precise limit. His "everything" is a mere vague generality, and the creator of it far below the distinctly individualized deity of Polytheism with a definite province marked out for him (see Spencer and Gillen, vol. ii. p. 492).

---

[1] Schoolcraft-Drake, i. 152.

[2] Schoolcraft, ii. 195.

[3] Waitz, vol. iii. p. 385; De la Saussaye, vol. i. p. 262 (Negroes). Among the Ojibways there was said to have been a Great Spirit, but he was indifferent, while there was a bad spirit and innumerable subject spirits, and especial awe of the thunder. Among the Haida, Harrison (*J. A. I.*, xxi. 15–17) finds a good and bad spirit of Light and Darkness, but the minor deities are more important. Among the Western Déné in general there was no supreme being (Hill-Tout, *Brit. N. America*, p. 166); apart from some vague idea of a being in the sky who caused rain and whom they did not worship, but had to appease (Morice, *Proc. Can. Inst.*, vii. 157). Shamanism and totemism were the working beliefs (Hill-Tout, 177, 178). The Blackfeet recognized the "Old Man" as chief god, but did penances to please the sun (Grinnell, p. 258). Among the Nootka the chief may pray to the deity, ordinarily they address themselves to the sun and moon (Boas, *B. A.*, 1890, p. 595). The Tsimshian may pray to heaven, but ordinarily address a Neqnoq, which means anything mysterious from the will of heaven to the whistle used in the dances (Boas, *B. A.*, 1899, p. 846). The Eastern Déné dimly recognize the Great Spirit, but he has no influence on conduct, while numerous minor spirits are propitiated (Ross, *Sm. Rep.*, 1866, p. 306). The Californians recognize an Old Man above, but the coyote is the most useful and practical deity (Powers, *op. cit.*, p. 413). The Good Spirit of the Tehuelches is careless, and perhaps of Christian origin. The evil spirits are propitiated or warded off by shamans (Musters, *At Home with the Patagonians*, pp. 179, 180). The Araucanians are said by D'Orbigny (*Voyage*, i. 37) to recognize a creator without worshipping him, but according to Latcham (*J. A. I.*, xxxix. 346) the Thunder-God is their chief deity. The Puelches (D'Orbigny, ii. 270) think the Good Spirit needs no prayers, but an evil one who sends disease and death can be evoked by shamans. The Chiriguanos have a good as well as a bad spirit, but no cult (Thouar, *Explorations*, pp. 47, 209). The Uaupes have no definite idea of God, but propitiate a devil (Wallace, *Amazon*, p. 482 seq.). In British Guiana the supposed supreme gods are rather the tribal ancestors. Good spirits are disregarded, and the object of ceremonies is to avert the attention of evil ones (im Thurm, *British Guiana*, pp. 366–368). The Aucas are said to recognize a good creator, who is bound to give them all they want. The medicine women are creations of an evil spirit (D'Orbigny, II. 289). Among the Indian hill tribes the Angami Nagas have a vague belief in a supreme being, but look on him as too great and good to injure them (Godden, *J. A. I.*, xxvii. p. 30). The Kukis, according to Dalton, recognize a supreme God who is man's judge, but he mentions sacrifices to the evil spirit that causes diseases (*Ethn. of Bengal*, p. 45). The Kasias have a name for the supreme being, but their cult is concerned with spirits (*ib.*, p. 57). To the Munda Kol (Sellinghaus, *Z. E.*, iii. 326 seq.) attributes "childish monotheism and a developed belief in witchcraft and bad spirits." The Oraons have a supreme god who is not worshipped (Dalton, 247 seq.). Among the Sakai, Semang and Jakun, the working cult is shamanism, some greater spirits being vaguely known (Skeat, *J. A. I.*, xxxii. 138). The Thado clans believe in a creator who takes little interest in them, the cult of lake, wood and river spirits being the more important (J. Shakespear, *J. A. I.*, xxxix. 375). The Singphos admit a chief spirit who existed before the earth, but

---

animism, shamanism, and ancestor worship constitute the body of their cults (Wehrli, *I. A. E.*, xvi. 49).

In Africa, the idea of a supreme spirit of the sky, wielding the thunder and giving rain, prevails all over Congoland, and is vaguely held even by the Pygmies (Johnston, *G. Grenfell and the Congo*, pp. 632 seq.). This deity is more or less anthropomorphic and more a creator than an ancestor, however indifferent now to humanity. Certainly in the belief of many Congolese he is too far off to care for man, whom he created but left to the control of minor spirits (p. 636). The attributes ascribed to him by the Baila are interesting: "The one who throws down for himself the imbula first. The one who institutes customs, who gives gifts and rots them; who rots the masako; the creator, the sender of so much water that there is no place left dry, the giver of thunder and much rain, the one who does what no other can do; that all things are his and he can do as he wishes." The Mayombe recognize the existence and power of Zambi, but do not invoke him because he represents fatality (Overbergh, *Monogr.*, ii. 291); possibly Zambi is Wakanda again (cf. p. 388). Among the Basonge there is an anthropomorphic god, who is all powerful, but as he lives in the earth it is useless to implore him (*ib.*, *Monogr.*, iii. 392). The Mangbetu have a vague belief in a supreme being, but no name for him except Kiluma, which = everything they do not understand. The thunder, however, is Kiluma speaking in anger, which suggests partial personification (ib., *Mongr.*, iv. 375). Among the Melanesians, Quat did not create the world, but formed its present conditions (somewhat as the Columbian transformers). He is rather a hero of tales than a lord of spirits, playful and full of magic power (Codrington, pp. 152, 157, 158).

Traces of a cult in connection with a high god appear, however, in certain instances. In Australia, among the Euahlayi, Mrs. Parker states that prayers for souls might be addressed to Baiame, and that orphans could pray to him for rain (p. 8). In N.-W. Central Queensland, magicians obtain power from Mulkari, a beneficent being who is the cause of whatever is unaccountable (and thus looks a little like Wakanda) (W. E. Roth, p. 153). The Herbert River Kohin is a warrior, and we might regard him as a demon, but the natives look on him as a father and he punishes breaches of custom (Howitt, pp. 498, 499). Summing up on the "tribal all-father," who, under the name of Daramulun, Baiame, etc., extends over the S.-E. of Australia, Howitt writes: "There is no worship of Daramulun, but the dances round the figure of clay and the invocating of his name by the medicine men certainly might have led up to it" (p. 507). On the Pacific slope, the Kootenay are said by Chamberlain (*B. A.*, 1802) to worship the sun or heaven, while the Coast Salish worship the sun and the Great Wanderer, the Kwakiutl the sun, the Thlinkeet the sun, mountains, thunder, the killer and the seal (Boas, *B. A.*, 1891). None of these seem to be supreme beings, though Chamberlain finds the idea of an over-ruling spirit in the sun-worship of the Kootenay. The Thompson Indians believe in transformers, especially the Old Coyote, but it is not clear whether they are addressed in prayer (Teit, *Jesup Expedition*, 1900, p. 337).

Among the Indian hill peoples the Garo recognize and have a priesthood of a supreme god (Dalton, p. 59). The Katodis, a nomadic tribe or caste, are said to pray to a supreme being for bodily needs. He sends rain, but as they do not know whether he creates life, his position cannot be very well defined (J. Wilson, *J. R. A. S.*, vii. 26). The Punans (a very primitive people) pray to Bati Penialong, who is the chief god of the

On a review of the evidence (the heads of which are given in note 3, p. 394, and which it must be confessed, is often vague, baffling, and even contradictory) the most reasonable conclusions are as follows: (1) The conception of a creator has arisen apart from civilized influences among some peoples even of very low culture. (2) High gods, as a supreme sun or sky god, or a culture hero such as Baiame, are more common, and are also found in low grades. (3) A supreme god is very rarely the object of a cult, but "high gods" are frequently the originators of custom and concerned in its maintenance, are sometimes gods of the dead, and are occasionally addressed in prayer. To this extent we must qualify the generalization that magic, and some form of animism, animatism, or the cult of the dead form the working creed of the simpler peoples.

8. We have now before us in outline the principal elements in primitive thought—what may be called the *materia magica* and the *materia divina*, the separable quasi-material spirit, the undifferentiated "life" of persons, animals and things, the surviving spirit, the occult sympathies, transferable qualities and

---

more advanced Kenyahs. He is "probably conceived anthropomorphically," but with less distinct human qualities than among the settled peoples. Among the Kenyahs, Hose and McDougall think that Bati Penialong was originally a war god and has come to be a chief among gods (*Pagan Tribes of Borneo*, ii. 13, 186 seq.). In E. Africa the Nandi pray and sacrifice to the sun, whom they hold to be the creator of man and beast (Hollis, p. 40).

Here and there the dead are associated with a spirit who may perhaps be thought of as a high god. Among the Mycoolon of Queensland, the dead climb eventually to the sky, where they are looked after by a spirit (E. Palmer, *J. A. I.*, xiii. 291). Among the Gournditch Mara, according to Stähle, in the place to which a good departed might go there was a man who took care of the world (Kamilaroi and Kurnai, Appendix F). Among the Larrakeah, Foelsche describes a very good man living in the sky, who made all things excepting the black fellows, while another good man lives in the earth and made the first black, and is said to judge them. On the Namoi and Barwin Rivers, one account is that the good or, perhaps, all the dead go to Baiame, others say that they become birds (Ridley, *J. A. I.*, ii. 269). Among the Yuin, the soul, or shadow, goes to Daramulun (Howitt, p. 495). The Ngarigo thought that the dead were taken care of by Daramulun (Howitt, p. 437). In the Maryborough tribes a being called Birraĭ directs the good among the dead, including good hunters and warriors, to the island where they are to dwell, but little seems to be known of this spirit (Howitt, p. 498). In N. America the Pawnees were created by Ti-ra-wa and will live with him after death (Grinnell, *Pawnee Stories*, 354). In Brazil, among the Jumanas, there is a good spirit who eats with the soul after death and takes it to himself (von Martius, p. 485). In New Guinea, among the Northern Massim, the dead go to an underground place presided over by Topilita, a man with huge flapping ears, who first sent men with their totem animals into the upper world. He lives like an ordinary chief, but has magic powers and can cause earthquakes (Seligmann, *Melanesians of New Guinea*, 733).

influences by which the changes of the world and the chances of life are affected, the Mysterious that surrounds man and with which any notable fact or object may be invested, and finally, the imagery with which the play of fancy may populate the world. None of these things are by themselves a religion, or a magic, or a philosophy. They are the elements or material out of which early man forms a religious cult or a magic art. How does he do this? To answer this question we must first define religion and magic.

We may remark first, that, however distinct in idea, animism and magic find, especially in primitive times, many points of contact. Totemism is one instance, for, as has been pointed out, the bond of union which makes the totem one with its human worshippers, or rather fellows and allies, is of magical character, while the totem itself is often a spirit or perhaps even a god. Again, the magic power may come from and be controlled by a man. Thus the whole object of Melanesian cults is to obtain and use mana. A dangerous magical influence, again, may emanate directly from a deity. Thus, when Uzzah touches the Ark he is immediately struck dead, not because he did anything wrong, for his intention was absolutely innocent, but because Yahveh "broke forth" upon him. The Ark, being the habitation of Yahveh, was intrinsically dangerous, just like a highly electrified body.[1] Animism creates spirits of the dead, but the operation of these spirits and of death in general is conceived in terms of magic. The mourner who may be haunted by the dead is infected by their danger and has to seclude himself, and this, rather than the desire of supplying the deceased with comforts, is on some occasions probably the true explanation of the destruction of the dead man's property and of the mourning imposed upon his widow. Again, a magic influence may become a spirit. The curse which the evil-doer brings upon himself may be conceived magically, or it may pass into a spirit which haunts the man; or finally, by a union of both ideas, it may be an evil which the spirit inflicts upon the man.[2]

But this only shows that the material of magic and animism can be combined or interwoven. What is magic in itself, and what is religion? Magic is not the belief in occult influences, homœopathic actions and so forth, it is an art whereby men seek to attain ends by the use of occult influences. When these influences are thought of as mysterious or act in a supernormal way, it is itself an occult art, the peculiar property of a magician, or a god, or a ghost. Thus, the magical art that the common man may use rests on connections which present no difficulty to the savage mind though much to a mind infected by common-sense distinctions. The magic of magicians or spirits rests on similar influences raised to a higher power by mana or wakanda.[1] Magic as such has nothing to do with religion except (1) that it moves in a supersensible world; (2) that it is an effort to get on terms with the world, and as such provides an outlet for emotion and a confidence in success which are of real psychological efficiency. Generally, magic is the control of occult forces for human ends, the occult being, as defined above, that which is neither apparent to the senses nor legitimately inferred from the sensible. These forces may include spirits, ghosts, demons, even deities, but the test of magic always is that the spirit is subservient, not the magician. Moreover, the means which render the spirit subservient are themselves non-spiritual—spells, incantations, the use of sacred names, homœopathy or infection. We should not, therefore, be wrong if we supplemented the definition by introducing the contrast with the spiritual, and described magic as the use of non-spiritual occult forces for human ends, understanding that one of the applications of these forces might be to control spiritual beings. We may add that as resting on the occult in the sense defined, as wrapping itself in mystery rather than seeking its explication, magic is not akin but opposed to science.[2]

---

[1] This magical conception seems at least to underlie the anthropomorphic account in 2 Sam. vi. 7 seq.

[2] See some remarks by the present writer in *Sociological Papers*, vol. ii. p. 172.

Religion is also an effort on the part of man to get on terms with the world, but its path lies through the conception of man as a spiritual being, member of a spiritual order, which gives meaning to his life, direction to his conduct, fortitude and consolation in the life-tragedy. Generally, religion is the service of the spiritual order, and its development consists in the progressive apprehension of the spiritual, an apprehension which is never merely intellectual, but which is permanently based on an emotional and practical response. In its essence the spiritual is the impulse to harmony which, as contrasted with inanimate matter makes for life, as contrasted with the inertia of the vital mechanism impels to fuller realization and the development of higher faculties, as contrasted with the dumb-driven impulse inspires the articulate creative purpose, as contrasted with the indifferent self-centred individual reveals comprehensive unity of aim and regenerates the life of the part with the consciousness of the whole. The conception grows by antithesis to the mechanical. But in its first phases this antithesis is not formed. Inanimate things, animals, and human beings are not clearly differentiated, and while the spirit begins to be thought of as that which gives life, it is conceived as that half-material entity which has been called the double. It is a step in advance when the spiritual being is endowed with a distinct and concrete personality, for personality is a feature of the life of spirit. It is a higher stage again when God is defined as a spirit pure and simple, when God, in fact, becomes the incarnation of all that is understood of the spiritual order, or when, as in non-theistic forms of religion, the spiritual order is conceived as that which guides and gives meaning to the life of man.

---

[1] I follow Dr. Jevons, therefore, in holding that magic essentially implies a magician (*Sociological Review*, 1908, p. 112. Cf. Wundt, *Völkerpsychologie*, Book IV. pp. 262–285).

[2] When a Melanesian tests the reputed mana of a stone by examining whether it makes the plants grow (Codrington, p. 119), he is, so far, introducing the common-sense touchstone of experience which is the rudiment of science, but in the same degree he is rising above the magical plane of thought.

In this development the driving forces are in a sense the same throughout, except that man's conception of the spiritual becomes clearer and his emotional response changes its character accordingly. If we ask how the development begins, we cannot obtain a certain answer because we do not know the character of really primitive belief, and we can reply only by comparing what is actually known or probably reported of very simple folk, and by considering the results in the light of human nature and the ways of uncritical thought. We have found many elements contributory to religion, none of which is in itself a religion. For religion, resting in services, must be taken at this early stage to imply a cult, but the sense of mystery is not a cult, the belief in a double or in the spirit of a rock is not a cult, the fear of the dead is not a cult, a tale of creation even by an anthropomorphic being is not a cult. All these, however, are materials from which a cult may arise, and in particular their combination might give rise to a true religion. It is quite possible that in different parts of the earth they came together in different ways, and there may have been instances in which the vague Wakanda took spiritual form and so constituted a single high God, a spirit viewed with awe, giving rise to worship, before minor spirits were formed. But the evidence as a whole suggests a different direction for the normal line of movement, and brings us by a roundabout road very near to an old-fashioned theory. Among the lowest savages we find a fear of the dead expressed in the abandonment of the corpse and place of death and the destruction of the personal belongings. In this fear there is no element of religion, though it may very readily (with or without the aid of dream forms) engender a belief in a surviving spirit. But sometimes, as among the Veddas, we find this avoidance qualified by offerings of rice and milk to the yaka or spirits of the dead, and among the Yaka we find one Kande Yaka, the spirit of a great hunter who died long ago, who is invoked at the offerings of the dead and to whom, some say, spirits have to apply for leave to obtain offerings and help their relatives. Primarily an assistant in hunting, he becomes lord of the dead, and he was, our authors think, a real man whose cult, on account of his qualities, continued longer than usual.[1] If Kande Yaka were but associated with certain tribal customs, he would become a Baiame and a culture hero.

Now the dead are feared but they are also revered and loved, feared as associated with the final terror, loved because death obliterates faults, and memory is a regret.[2] As the kindlier feeling predominates and subdues fear to awe, emotion prompts the well-known acts of affection and homage, the gift of food and raiment, the adornment and decency of bestowal which we, no less than the savage, feel the necessary due. We would still give our tribute to the dead though we know it to be useless, because the giving is the natural discharge of the emotion which dominates us. Early man, beginning with the emotion and proceeding to the gift or the service, presently asks himself for a reason for what he is doing, and answers himself that the dead are there and are gratified. Here is the emotional basis of a belief which the uncritical judgment readily accepts, and the cult acquires a definite meaning and purpose. Considering the ubiquity of the forms of burial practice, shading from fear and avoidance into reverent attention and service, we may reasonably suppose this to be the normal form of that which may fairly be called religious belief and practice in early society. At the same time, the fear and regard for natural objects, prompting men to treat them as alive and so to think that they are alive, may develop side by side and emerge into the belief of spiritual beings whose good-will must be gained if man is to be safe. These are the two forms of true cult that we find prevalent among the simplest peoples.[1] In either case we inquirers express the matter logically as a belief in spirits, on which certain practices are based, around which certain emotions cluster. But psychology suggests that, to picture the historical development aright, we should reverse the order—that there was first the emotion, love and awe, fear or gratitude, or the supplicatory tension of hope and anxiety; that these expressed themselves in such acts as we perform when so moved towards human beings, and that these acts, operating in the mental twilight of indistinct categories, engendered the notion of spirit as that which is human and non-human, animate yet inanimate, intelligent yet insensate, vitalizing body but itself body. This spirit, moreover, is the culmination of the first stage of development, other forms of early belief only escaping similar contradictions because they lack definiteness of conception altogether. Animism, on this view, is justly regarded as the first definite form of religion, animism meaning the cult of spirits without the apprehension of spirituality, and being regarded as the outcome of an earlier stage in which elements and forms of religion are active but not religion itself. Within animism it is probable that the cult of the dead normally occupied the first place in time as it retains a foremost position in importance. On the other hand, animism is not the beginning but the end of a stage in development, and it is not the theory of spirits which gives rise to a cult, but more truly the cult, itself engendered by emotion, which creates the theory.

---

[1] Seligmann, *The Veddas*, pp. 122, 125, 127, 131, 141.

[2] These emotional suggestions are overlooked by Durkheim when he finds nothing "sacred" in the double in the mere fact that it is disincarnated (*Formes élémentaires de la vie religieuse*, p. 87, etc.).

---

[1] Whether totemism should be included in this stage of religious development is a question partly of fact, partly of definition, and in both relations difficult to determine. Professor Durkheim, defining religion by reference to the sacred, does not separate it generally from magic. For whatever is mysterious, be it spiritual or not, may be the object of observances to mark it off from the common, *i. e.* the profane. Now totemism rests on an identification of persons with animals or other non-human things which is essentially of magic character, and many of its observances seem to be true magic—*e. g.* methods of securing a supply of the totem object for food. To Professor Durkheim it is a religion because the object is sacred. For our definition it would not be a religion because the object is not a spirit nor the observance a cult. But Professor Durkheim would maintain that the totem is the symbol of the unity of a social group, and this is, for him, the real basis of its sanctity. This, he might say, is on our definition an essentially spiritual principle, and on this ground we should admit totemism as a religion even for us. On the other side, it may be urged that the feature of totemism is that the social unity is not spiritually but magically conceived. It is rather a body of magical practice containing certain ethical or even religious elements—" materia divina "—than itself a religion.

We speak, of course, of totemism in an elementary form. The totem animal may become an object of reverence or worship, as in some North American cases. But then we are at once in full blown animatism, if not animism in the stricter sense. The development, however, serves to show how the magic identification of the human and non-human may serve as one path to the belief in spirits of the inanimate world.

9. Religion makes its first step in advance when it recognizes gods who stand above the animate spirit. The difference between a spirit and a god is easier to feel than to define, but we may perhaps say that a god is a spirit endowed with a distinct personality and the object of a cult,[1] as exercising certain superhuman functions in nature or human life. Thus, the ordinary dead are not gods, for though they have quasi-magical powers they are not superhuman; rather they are dependent on men for food and offerings. They have no personality other than that which they really possessed in life, and this tends to fade away into the spirit shadowland; they perform no function other than that of helping their relations, which any man might do. A distinguished ancestor, a hero raised above the ruck, on the contrary, is on the way to be a god. Baiame and Daramulun, whether heroes or incarnations of the bull-roarer, are of this class. They look after the dead, they instituted custom and are concerned for its maintenance, and when they are also prayed to they must be held to have become gods. One avenue to the divine, then, is through the hero cult. Another is through the nature spirit. Here we get the clue if we turn back in mind to the ambiguities which we find at a stratum of thought which is a little bit above the lowest, between the indwelling spirit and a spirit which directs or governs an object in which it dwells no longer. Often these are ambiguities which, from the nature of the case, it is not possible for the civilized investigator to resolve. The spirit which dwells in an object but which can leave it and enter another, may clearly pass by easy transitions into a spirit which does not necessarily dwell in any object at all, but haunts it, or even, ceasing to haunt it, retains control over it. On the West Coast of Africa, Captain Ellis associates the transition with the rise of images. The Tshi, for the most part, recognize indwelling spirits, but when they make an image of the spirit, which must in the early stages be made of a fragment of the thing in which the spirit dwells, the tie between spirit and thing is weakened. In fact, it is clear that, to dwell both in the image and in the thing, the spirit must be in both places at once. In reality he becomes most identified with his place of worship, and so becomes the tutelary deity of the village in which his shrine is placed, and this is, says Captain Ellis, the

---

[1] Or at least one of a class which in the same society are the object of cults. We should not deny the title to Olorun (see below, p. 403) because he is not himself worshipped.

highest stage reached among the Tshi, where most of the gods worshipped are the simply indwelling spirits of prominent natural objects in the neighbourhood. The ghost-gods, who were originally human spirits, have a separate origin but similar history. The skull is brought into the temple, and so imparts a guardian ghost. Many such ghosts, again, become tutelary deities and are often blended with nature deities.[1]

But the neighbouring and more advanced Yoruba-speaking peoples have greater gods than these. They have replaced the local gods to a large extent by the gods of the whole people, and these are the gods who personify or direct the great natural forces. They are distinctly separate from the natural objects which they, or some of them, represent; and here we sometimes seem to see the transition going on before our eyes. Thus the great god, Olorun, is described as the Deified Firmament or Personal Sky. He is an old god, and he is too distant and lazy to interfere in the world's affairs, and for this reason he has dropped out of worship. It is to be observed that this sphere is strictly limited; he only controls the sky. "A man," runs one of their proverbs, "cannot cause rain to fall, and Olorun cannot give you a child." Olorun made Obatala, who is also the god of the sky and of the earth as well; but he is an anthropomorphic god; he made the first man and woman, he creates each new-born child; he causes deformities as a punishment for neglect, and he has an oracle by which the guilt of accused people is decided. Similarly, a minor god, Olokun, is not the Sea regarded as a living being, but an anthropomorphic deity who controls the sea.[2]

The greater gods, then, are conceived as human, and as being distinct from that which they control and out of which the conception of them is evolved. As Sir J. Frazer points out, when the tree ceases to be the body of the tree-spirit, and becomes simply its abode, the tree becomes "merely a lifeless inert mass," while the spirit tends to assume the body of a man, and ceasing "to be a tree-soul, becomes a forest-god."[3] And just as spirits dwelling in trees are replaced by a god on whom the life of trees depends, so the spirits who dwell in water give place to a lord of the sea, and the divine sky to a god who directs rain and snow, thunder and lightning, a king who reigns over skyland. Thus, in Greek religion, the worship of Ouranos dies away and yields to that of Zeus.[4] A place is, indeed, found for the discarded Ouranos in the theogonies which now become a feature of religious life. For the anthropomorphism of which the rudiments have already been noted in savage myth-making now receives a great extension. The genealogies, the births and marriages of the gods, their loves and hates, their deeds of prowess, are drawn out with exuberant fancy. Often, as we know, the gods retain traces of their lowly origin; they are associated with the animals or spots or other natural objects from which they were originally derived. Hence the hawk-headed or ibis-headed gods of Egypt, hence the animals sacred to gods, the clean and the unclean; hence many a practice explained mythically, but in its origin simply a piece of magic or animism.[1] But though the gods retain traces, more or less marked as the case may be, of their not too honourable descent, they become, as the religious life advances, more and more distinctively human, and in becoming human they also become superhuman. They are endowed at least with larger powers, with longer life, or with immortality, and in many cases also with physical, mental, and moral attributes of which more will be said later.

---

[1] A. B. Ellis, *The Yoruba-speaking Peoples*, pp. 276–284.

[2] *ib.*, 34–70.

[3] Frazer, i. 188. Numerous illustrations are subjoined.

[4] I am assuming the truth of the common view that Zeus himself was originally the sky, though from Mr. Farnell's account (*Cults of the Greek States*, vol. i. chap. iv.) this would seem not quite so clear. In Arcadia

This beginning of idealism must be regarded as the final condition which the spirit must fulfil in order to become a god. The

---

he was the thunder, *i. e.* the thunder itself was the god (p. 45). At Olympia Ζεύς καταιβάτης, Zeus as descending in the thunder, is worshipped (p. 46). But in Æschylus καταιβάτης is the epithet, not of Zeus himself, but of the thunder (see *e. g.* Prometheus Vinctus), and the thunder is not Zeus, but his "sleepless dart." Observe the three stages here. In the first Zeus is the thunder. In the third he is a personal god who wields it. In the second he is in an ambiguous condition, descending in the thunder, yet seemingly more than the thunder itself—the descent is one of his epithets, or, as Oriental thought might conceive it, one of his incarnations. The thunder itself is also animated in Æschylus, "sleepless" and "breathing flame," but we are to take this as conscious poetry, not as simple animism. Whatever the truth as to the original nature of Zeus, this development may stand as typical of the transition from animism to Polytheism.

In Latin the use of Jupiter for the sky persists in literature of the classical period (*sub Jove frigido*). But in fact it seems very doubtful whether the native Roman religion ever rose above the conception of spirits presiding over places, persons, and especially functions (Wissowa, *Religion und Kultus der Römer*, especially pp. 20–28, and Saussaye, *Lehrbuch der Religionsgeschichte*, vol. ii. p. 203, "Die römische Religion steckte noch tief in Animismus"). The anthropomorphic impulse came from the Greeks.

[1] Sir J. Frazer even says (*Golden Bough*, vol. ii. p. 167) that "we may conjecture that whenever a god is described as the eater of a particular animal, the animal in question was originally nothing but the god himself." In any case the association till recently so unintelligible of an anthropomorphic god with animals, plants, stones, and generally with quasi-fetich objects and savage rites, is now explained as referable, with very high probability, to a form of religious conservatism—an old rite being maintained in association with the worship of a new god.

gods of Polytheism are great gods, and often have troops of spirits in subservience to them. The typical relation indeed is, as Comte long ago pointed out, comparable to that between a species and an individual. The spirit of a tree strictly regarded is limited to that tree and functions only in this spot. A tree-god controls all trees. Similarly all the great gods control either large provinces of nature—sea, earth, sky (Zeus, Poseidon, Hades), or are protectors of the people, national gods (Yahveh, Ashur, Athene), or preside over one or more of the main human functions (Ares, Aphrodite). Thus in the conceptions underlying them there are beginnings of a higher unity, an approach to order in the religious basis of life, which is carried further as by the anthropomorphizing genealogies and hierarchies the many gods are brought into subjection to one father and ruler of all.[1]

The gods, then, as opposed to the spirits, are clearly distinct from the natural objects which they govern, or the functions which they direct. They are anthropomorphic, and so tend to be connected by family and political relationships. They control the great powers of nature and the main functions of life. And while human they are also superhuman, and at their best lend themselves to ideal forms of beauty and of ethical thought.

10. If Animism is the typical religion of savagery, the cult of the greater gods has its central point in the earlier civilizations. Yet to describe the religion of these civilizations would not be to describe polytheism. We have defined polytheism by marking it out sharply from animism on the one side, and (by implication, from monotheism on the other. But in the concrete development of religious history these demarcations are precisely what we do not find. The religion of the early civilizations is a mass of conceptions in which, around the figures of the greater gods, a surge of primitive animistic and magic practices rises and falls,

---

[1] Inasmuch as the gods have personalities which have hardened into concrete individuals sharply opposed to one another, it might seem rather that polytheism has carried us farther away than animism from the unity of nature, and that where (as in the indigenous Chinese religion) we have one supreme spirit of the sky and one of the earth, we are nearer to unity. But that is misleading. Such unity as we find in animism is the unity of a blur, the unity which precedes differentiation. The Chinese religion — an exceptional survival of animism in a high but very conservative civilization— no doubt arrives at a systematization in which something like the hierarchy of Polytheism is reproduced; but, if I understand it aright, in a much less articulate fashion. What, *e. g.* is the relation between the earth spirit and the countless spirits of hills, groves, rivers, etc., upon the earth? To this polytheism would have a definite answer. They would be subjects, or daughters, of the earth-mother.

while here and there, through the obscurity, there dimly looms the outline of a higher principle.

Thus, to confine ourselves to the two most ancient civilizations, we have in Babylonia and Egypt, amid much that is obscure, fairly typical examples of the stage of polytheism in which the animistic foundation is plainly visible, in which magic still plays an important part, in which the conception of godhead retains plentiful traces of its lowly origin, while, on the other hand, there are the beginnings evident of the stage of thought which was destined to supersede polytheism. These religions, in fact, have their centre of gravity in the polytheistic phase, while they put out ramifications into the phases below and above.

"The greater gods of the Egyptian pantheon are, as they stand in the historical period, impersonations of the greater forces that surrounded the Egyptian and controlled his life—the sky, the earth, the stars, the sun, the Nile."[1] In its early phases the religious development seems to have proceeded independently but on parallel lines in the partially independent nomes or districts into which Egypt was divided. Each of these originally had its chief god, who very often personified the same natural attributes under a different name. In particular, "wherever there is some important change in the river (Nile), there they (these incarnations of the river) are more especially installed and worshipped."[2]

The result of this multiplicity, as the different cults came into relation to each other, was a mythology of luxuriant confusions and inconsistencies, which led the Egyptian priesthood to attempt a remarkable solution. To this we shall have to refer a little later. But let us first notice that these greater gods are in all probability not the primary deities of the Egyptian religion, which has its roots rather in primitive animism. The association of many of the Egyptian gods with a special sacred animal has from the days of the Greek travellers down to the present generation been a puzzle of the greatest difficulty. Further research into the earliest Egyptian monuments coincides with the results drawn from comparative religion in making it probable that the animal is not the secondary figure in the cult, but, at least in point of time, the primary. The Egyptians had an animistic religion before they worshipped the greater gods Osiris and Ptah. The hawk-headed figure of Horus represents pictorially a combination between the worship of the sun-god and the earlier worship of the hawk itself. The worship of Sekhet in the form of a cat-headed or lion-headed woman, again, blends an anthropomorphic cult with the more primitive adoration of the cat tribe. Like other people in the animistic stage, in short, the early Egyptians worshipped animals and other natural objects, while the later Egyptians tended to conceive of the deities as anthropomorphic, superhuman spirits, and the historical Egyptian religion or mythology was a compromise or blending of the lower and the higher. Even the greater gods retained many traces of their animistic origin. The Egyptian deities, though great spirits, are by no means necessarily emancipated from either the weaknesses or the wickednesses of man.[1] They have their wives—not only goddesses, but harems of mortal women, priestesses of the temples. Not only do they marry and are given in marriage, but they die like men and require burial. Like men they have a composite nature, consisting of soul and body. The soul might be an insect, a bird, a shadow, or a double—Ka—and this latter was not essentially different from the Ka of man. Gods, in fact, were virtually conceived as men in their essential nature, having bones, flesh and blood, and a mysterious fluid, Sa, the source of vigour, with which they could impregnate man.[2] The dead god, like the dead man, required food and a house—his temple. Indeed, he could do with many temples, dividing his double among them in accordance with the accommodating looseness of texture which that entity everywhere enjoys. He might be incorporated in a statue or in a sacred animal.[3] Some gods remained the same after death, as Osiris; others changed their names and perhaps their character. Maspero writes—

---

[1] Maspero, *The Dawn of Civilization*, 85-86. Isis of Buto denoted the black vegetable mould of the valley (*ib.*, 99).

[2] Maspero, 99.

> "Their doubles, like those of men, both dreaded and regretted the light. All sentiment was extinguished by the hunger from which they suffered, and gods who were noted for their compassionate kindness when alive, because pitiless and ferocious tyrants in the tomb. When once men were bidden to the presence of Sokarís, Khontamentît, or even of Osiris, 'mortals come terrifying their hearts with fear of the god, and none dareth to look him in the face either among gods or men; for him the great are as the small. He spareth not those who love him; he beareth away the child from its mother, and the old man who walketh on his way; full of fear, all creatures make supplication before him, but he turneth not his face towards them.' Only by the unfailing payment of tribute, and by feeding him as though he

---

[1] Maspero, p. 126. [2] *ib.*, 108–110. [3] *ib.*, 116–119.

were a simple human double, could living or dead escape the consequences of his furious temper." . . .

All offerings to the dead were presented to him—

"He was humbly prayed to transmit them to such or such a double, whose name and parentage were pointed out to him. He took possession of them, kept part for his own use, and of his bounty gave the remainder to its destined recipient."[1]

In Egypt, as among other primitive peoples, "men did not die. They were assassinated." The murderer might belong to their world and be recognized as another man, an animal, an inanimate object. Or he might be a spirit, a god, demon, or disembodied soul.[2] At least in the earlier period some of the gods were cannibals. Sahû, *i. e.* Orion, is represented on the pyramid of Unas in the sixth dynasty as a hunter. He hunted the gods, killed and devoured them, and by so doing, in accordance with true cannibal theory, assimilated their virtues,[3] But what is even more remarkable, a man might do the same thing, and, by so doing, obtain control over the divinity. King Unas, in his address to the deities of the dead, boasts that the gods have been lassoed for Unas by one power, brought towards him by another. "Shosmu has cut them up for Unas and had the pieces cooked in broiling cauldrons. It is Unas who devours their magical virtues and eats their souls, and the great ones among them are for Unas' feast in the morning, the middle ones among them, male and female, are for his roast meat, the small ones for his evening meal. The old ones, male and female, are for his furnace." Again, "the inhabitants of the sky are made his servants, and the limbs of their womenkind are thrown into the cauldrons. Unas has taken the hearts of the gods, has devoured the red crown, has eaten the white. His victuals are those whose magic virtues are nourished on hearts, he has eaten the wisdom of every god."[4] It is to us a little bizarre for a man to recommend himself to the heavenly host on the ground that he has eaten them, but the animistic view of nature, with its spirits, that are at once immaterial and material, that can live by perishing, that may nourish man yet exist apart from him, which are more powerful than he and yet controllable by him, solves all these contradictions. Unas controls the gods because he has possessed himself of their virtues by eating them. Isis obtained control over Re in his decrepit old age by stealing his name, by the knowledge of which she had over him a magical control. In the same way men could control the gods by magical incantations, the use of wax effigies, etc.[1] This is in line with the lowest ideas of witchcraft. Side by side with it we find the typical conceptions of anthropomorphic religion, *e.g.* sacrifice as a contract between deity and worshipper. The god himself prescribes the details, and of course undertakes to fulfil his side of the bargain. He abolishes human sacrifice, declaring that he will be satisfied with an animal. But he is still a stickler for form. Any error of detail would void the contract, and this is all to the good of the priestly order.

---

[1] Maspero, 117–118.

[2] *ib.*, 111.

[3] Maspero, *The Dawn of Civilization*, 97, 98.

[4] Maspero, *Recueil de Travaux*, p. 59 ff.

But if on its lower side the Egyptian religion is thus rooted in animism and magic, if the gods figure almost as demons who destroy men, and are responsible for such deaths as cannot be assigned to obvious physical causes, if they have human concubines and can be controlled by magic—on its other side the esoteric philosophy of the priests tends to transcend polytheism, and to conceive the ultimate unity of the Divine. The very multiplicity of gods—especially of gods with similar functions and differing only in name—was a stimulus to thought, and called for some theory to explain so bewildering a confusion. As the unity of Egyptian culture grew, the separate nome-gods were necessarily united in one pantheon. In each nome a local trinity or triad was found, the nome-god being associated sometimes with wife and son, sometimes with two goddesses, "who were at once his sisters and his wives according to the national custom."[2] Whether deliberately introduced for the purpose or not, the system of triads had the effect of reconciling the supremacy of the old nome-gods in each locality with a recognition of gods originating in other parts. The god who was supreme in one nome would enter the triad of another nome in a subordinate position.

> "Hâthor, supreme at Denderah, shrank into insignificance before her husband, Haroêris, at Edfû. . . . On the other hand, Haroêris, when at Denderah . . . was nothing more than the almost useless consort of the lady Hâthor."[3]

A still more elaborate system of Enneads, or groups of nine gods and goddesses, arose in the Old Kingdom. The earliest recorded is the Ennead of Heliopolis, the best known is that of Memphis, the centre of which was Ptah. In the Ennead, Atum (one of the names of the sun god) is the creator of things, but

[1] Maspero, *The Dawn of Civilization*, 212, 214.

[2] *ib.*, 104.

[3] *ib.*, 106.

the members of Atum are made up of the Ennead, and the heart and tongue of the Ennead is Ptah.

> "When the eyes see, the ears hear, and the nose breathes they transmit to the heart. It is he (the heart) who brings forth every issue, and it is the tongue which transmits the thought of the heart. He fashioned all gods, even Atum and his Ennead. . . . It was he who made the kas and [created] the qualities (*i. e.* of the sun god); who made all food, all offerings by his word; who made that which is loved and that which is hated. It was he who gave life to the peaceful and death to the guilty. . . . He fashioned the gods, he made the cities. . . . Then the gods entered into their bodies of every wood and every stone and every metal. Everything grew upon its trees whence they came forth."[1]

This is neither pure Pantheism nor Monotheism, but it is the germ of either or both. One god is not set up to the exclusion of others as in Monotheism, nor is all the universe merged in a divine spirit as in Pantheism. Rather nine great gods are somehow merged in one which is the central principle among them, and this principle is the heart, which figures the mind or soul in the concrete terms of early thought. The unity is not that of a profound mysticism which has seen through differences to a deeper identity, nor yet is it the purely childish blurring of differences that we find in magic. It is something on the way from the lower to the higher stage of thought, and it would doubtless have proceeded further and faster in Egypt but for the multiplicity of local centres, each jealous for the sole deity of its own domain.

> "The feudal spirit, always alert and jealous, prevented the higher dogma, which was dimly apprehended in the temples, from triumphing over local religions and extending over the whole land. Egypt had as many 'sole' deities as she had large cities or even important temples. She never accepted the idea of the sole god 'beside whom there is no other.'"[2]

The monotheistic tendency nevertheless developed in later periods, mainly in the form of an elevation of the sun god to a supreme position. Thus, in the Instruction for King Mery-ke-re of the Middle Kingdom we read—

> "God made heaven and earth at their (men's) desire;
> They are his own images proceeding from his flesh."

---

[1] Breasted, *Development of Religion and Thought in Ancient Egypt*, pp. 43–46.

[2] Maspero, *Dawn of Civilization*, p. 152.

He "knows every man." He may hide himself for a generation, but his authority is always there.[1]

The expansion of Egypt under the New Kingdom would make men think of the power of the greater gods in terms of the whole world rather than of Egypt alone, and so it is perhaps that a more definite monotheism makes its appearance.[2] In a hymn of Amenhotep III.'s reign (*circ.* 1400 B.C.) the sun god is he—

> "Who determines his own birth . . .
> Illuminating the Two Lands (Egypt) with his disk,
> The primordial being who himself made himself . . .
> Sole lord taking captive all lands every day."[3]

Amenhotep IV. about 1375 B.C. made an extraordinary attempt to establish the worship of the sun god under the name of Aton to the exclusion of every other. No other gods or images of gods or formulas swearing by gods were tolerated. Even in the charms for the dead Osiris might not be named.[4] This was certainly monolatry and it would seem also true monotheism, for Aton is addressed as creator and father of all—

> "O sole god whose powers no other possesseth,
> Thou didst create the earth according to thy heart
> While thou wast alone . . .
> The foreign countries Syria and Kush,
> The Land of Egypt, . . .
> O god who himself fashioned himself . . .
> Thou art the mother and the father of all that thou hast made."[5]

Amenhotep IV. was in advance of his age and his reforms were swept away. For people found that "if men prayed to a god for succour, he came not . . . if men besought a goddess likewise, she came not at all."[6] Yet under other names, mainly as Amon-Re, the supremacy of the sun god and the monotheistic tendency survived and, as we shall see further, takes a more distinctly ethical turn, as in the hymn to Amen Re—

> "Hearing the complaint of him who is oppressed,
> Kindly of heart when called upon,
> He delivereth the timid from him who is of a froward heart,
> He judgeth the cause of the weak and the oppressed. . . .
> One and only one, maker of all that are,
> From whose eyes mankind issued,

---

[1] Gardiner, *Journal of Egyptian Archæology*, January 1914, pp. 33, 34. Mr. Gardiner speaks of the lines quoted as perhaps the earliest monotheistic passage in Egyptian literature.

[2] Mr. Breasted lays great stress on this political factor (*op. cit.* pp. 47, 315, etc.).

[3] Cf. p. 317. [4] p. 340. [5] *Op. cit.*, pp. 326–330, etc. [6] p. 345.

By whose mouth the gods were created,
Who makest the herbage, and makest to live the cattle, goats, swine and sheep, etc., etc. . . .
Sole king is he even in the midst of the gods;
Many are his names, none knoweth their number."[1]

This is not monotheism. It reminds us rather of the psalm that begins, "God sat among the congregation of gods," in which Jehovah appears as the chief figure of a Pantheon. It reminds us still more forcibly of the Vedic hymns in which each god in turn is extolled as the one and only god.

Still later we find the pantheistic strain—

"Thy form is the Nile, the first born, older than all the gods; thou art the great waters, thou art the sky, thou art the earth, thou art the nether world, thou art the water, thou art the air that is between them. Men rejoice because of thee, (for) thou ceasest not to care for all that is."[2]

Egyptian religion rose to an esoteric doctrine which was far above the crude animism from which it started, and tended alternately towards monotheism and pantheism without reaching either or even deciding definitely on its true road. For it at no time embodied either the spiritual message of an apostle or the reasoned system of a thinker. Yet in its dim prevision of real unity underlying differences of form and tradition and its ever closer association of religion with ethics it reached the highest point short of those "discoveries" in the region of spiritual truth which have laid the basis of the world religions.

11. In Babylon, as in Egypt, primitive animism and the magic which is correlative to it, underlie throughout the worship of the greater gods. In its progress to a higher stage the Babylonian religion, it would seem, worked by differentiation. The more important natural forces became gods, the inferior ones were, as a general rule, relegated to the secondary position of mere spirits.[3] But at Babylon these inferior gods became in large measure demons, often malevolent demons,[4] and the Babylonian magic, which was so important a feature in the life of the people, had special reference to these demons. They could

---

[1] Griffith, *World's Literature*, 5312, etc.

[2] From a hymn of the Persian period, late in fifth century B.C. (Breasted, p. 361).

[3] Jastrow, *Religion of Babylon and Assyria*, p. 49.

[4] As an illustration, Nun-gal was, by origin, probably a lower god of Sippar. He disappears as a god, and his name becomes a collective designation for a powerful group of demons (*ib.*, 168).

be dealt with in one of two different ways, for the bewitched man might either appeal to a sorcerer, who could control the spirit directly, by potions, tying knots which would strangle him, burning images, and so on, or to an exorcist, who would apply to the gods for their help against the demon, and if properly treated would deliver the victim out of their hand. Here is a description of the Storm Demons of Eridu—

"Seven are they, they are seven,
In the subterranean deep they are seven,
Perched (?) in the sky they are seven,
In a section of the subterranean deep they were reared,
They are neither male nor are they female,
They are destructive whirlwinds,
They have no wife nor do they beget offspring.
Compassion and mercy they do not know,
Prayer and supplication they do not hear,
Horses bred on the mountains are they.
Hostile to Ea are they,
Powerful ones among the gods are they.
To work mischief in the street they settle themselves in the highway,
Evil are they, they are evil,
Seven are they, they are seven, seven, and again seven are they."[1]

Next hear how the demons took possession of a man and how they were driven out—

"They have used all kinds of charms,
to entwine me as with ropes, etc. . . .
But I, by command of Marduk, the lord of charms,
by Marduk, the master of bewitchment,
both the male and female witch,
as with ropes I will entwine,
as in a cage I will catch,
as with cords I will tie,
as in a net I will overpower,
as in a sling I will twist,
as a fabric I will tear,
with dirty water as from a well I will fill,
as a wall throw them down."

This is declaimed by the exorciser and accompanied by symbolic actions.[2]

Often the gods are described in terms of the crudest animism. When Ut-Napishtim sacrifices after the flood, "The gods inhaled the odour, the gods inhaled the sweet odour, the gods gathered like flies around the sacrifice."[1] The finest hymns and prayers are associated with incantation rituals. The efficacy of prayer depends on its being uttered by the right person and in the right manner, for the approved form of words is of magical efficacy.[2] The gods are of limited power. They are taken captive, and released by Marduk, "who showed mercy towards the captured gods, removed the yoke from the gods who were hostile to him."[3] They sanction the Flood and then bitterly regret, but cannot undo what they have done. The gods wept with Ishtar, "the gods in their depression sat down to weep."[4] Bel alone was ruthless. He bitterly resented the preservation of Ut-Napishtim —"What person has escaped (?)? No one was to survive the destruction." The good Ea expostulates with him.

---

[1] Jastrow, 264.

[2] *ib.*, 272.

> "Punish the sinner for his sins,
> Punish the evil-doer for his evil deeds.
> But be merciful so as not to root out completely,
> Be considerate not to destroy everything.
> Instead of bringing in a deluge,
> Let lions come and diminish mankind. . . .
> Let tigers, famine, pestilence, come and waste the land."[5]

Thus adjured, Bel came to his senses, took Ut-Napishtim by the hand and was reconciled.

Thus, as is natural on anthropomorphic principle, there are among gods, as among men, good and bad, kindly rulers and headstrong tyrants. We have seen Ea interceding for mankind. He is the water-god, the giver of fertility; he teaches the arts of civilization, and his cult is favourable to human feeling. He tends to be the god of mankind generally, as dissociated from any particular spot. Marduk, again, is a magnified king, the protector of the weak, he releases the imprisoned, and punishes the evil-doer. But Shamash in the Assyrian cult is the centre of a higher conception than any other deity.[6] While Ashur and Ishtar are partial to Assyria, the favours of Shamash are bestowed on the kings for righteousness, and it is in the presence of Shamash that Tiglath-Pileser sets his captives free. The following hymn to Shamash will illustrate his character—

> "The law of mankind dost thou direct,
> Eternally just in the heavens art thou,
> Of faithful judgment towards all the world art thou."[7]

---

[1] Jastrow, 503. [2] *ib.*, 353. [3] *ib.*, 438. [4] *ib.*, 502. [5] *ib.*, 504.

[6] With the exception, perhaps, of Sin. See the hymn to Sin quoted in Jastrow, p. 303.

[7] Jastrow, 300.

Yet in this hymn, which is a prayer for the king's life, the later lines are a distinct echo of the incantation formulæ—

"Cleanse him like a vessel . . .
Illumine him like a vessel of . . .
Like the copper of a polished tablet let him be bright.
Release him from the ban."

With this may be compared Nebuchadrezzar's hymn to Marduk on his accession—

"O, Eternal ruler! Lord of the Universe! . . .
It is thou who hast created me,
And thou hast entrusted to me sovereignty over mankind.
According to thy mercy, O Lord, which thou bestowest upon all,
Cause me to love thy supreme rule.
Implant the fear of thy divinity in my heart."[1]

In such a conception of prayer there was surely the potentiality of a high development of ethical religion. Yet worship fails to differentiate itself wholly from magical incantation,[2] and though there are good gods who love justice, they are not fused into the unity of one real creator of things. In spite of some occasional expressions,[3] the better opinion appears to be that there was no real monotheistic tendency among the Babylonians.

12. In the religion, or rather the religions, of the Greeks, again, as in the light of modern research and the comparative method we are coming gradually to understand the subject anew, we see three distinct stages of thought intertwined. At the base we have the demons of animism and the magical rites of "riddance." We have the Keres, not awful mysterious fates as they already appear at times to be in Homer, but flitting mischievous demons bringing all manner of ills, driven away with sticks or purged with strong scents and holy plants like rue and buckthorn.[4] We have the conception of a quasi-physical pollution arising now from breach of ceremonial, now from an outrage on the most sacred human relations, and extending to physical objects[5] as well as to man. We have the living, self-avenging curse, the thin ghost squealing like a bat, and crowding to "drink the life-blood in the trench Ulysses made," the animal god, the bogy, the monster brood. Above these fearsome shapes

---

[1] Jastrow, 296.
[2] *ib.*, 296 seq., 314.
[3] See, *e. g.* the hymn to Sin, referred to above, and cf. Jastrow, 319.
[4] Harrison, *Prolegomena to the Study of Greek Religion*, p. 168.
[5] *e. g.* the pollution of the earth by blood.

we have the more gracious, strong, beautiful, and finally ideal human forms of the Olympian gods—essentially mere men and women in the first instance, as every reader of Homer knows, but built on a greater scale; turbulent, laughter-loving, now tender and friendly, now unreasonably resentful; joining in the fights of mortal men, and capable of being wounded by them, prosecuting the blood feud, as Poseidon against Odysseus, with no more regard to the inherent justice of the case than the human avenger would show; placated by sacrifice and trusted to perform their part in the implied sacrificial compact; united, finally, in intricate theogonies, and so affording a crude basis for the framework of things and the process of creation. But the Olympian gods, though human in their essence, were superhuman in the types of their might, majesty, and beauty. They have incarnated for all subsequent time the ideal types of finite humanity, the satisfaction of a mind reposing on the work that it has done and knowing that it is good, not troubled as yet with the infinite beyond and the poverty of man's power to cope with it. They are "the happy ones," glorified children of a time—not as an older generation supposed when the world was young, for the world in Homer's day was already old, but when for a while it seemed to be renewing its youth under fortunate conditions, beneath a sunny sky. But the Greek mind outgrew anthropomorphism and the higher development took two directions. On the more purely religious side in connection with the Orphic mysteries it followed a line not unlike and greatly influenced by the esoteric doctrine of the Egyptian priests. The movement was in part an advance, in part a reversion to older methods. The initiated felt dimly for a higher religious conception by the method of mystical identifications, first between the gods in their various forms—

"One Zeus, one Hades, one Helios, one Dionysos,
Yea in all things One God, his name why speak I asunder?"[1]

Secondly between the god and the worshipper—

"I also avow me that I am of your blessed race,"

says the initiated, and the reply is—

"Happy and Blessed one; thou shalt be god instead of mortal."[2]

Similarly in the Egyptian *Book of the Dead*, the soul which passes the tests becomes itself Osiris. But as the *Book of the Dead* is essentially a provision of magical formulas, whereby admittance to the realms of bliss is to be enforced, so it would seem that the Orphic ritual is at bottom a ritual of magic.[1] It is the performance of ceremonial acts of occult efficacy upon which the soul is to rely. Here, as so often in mysticism, the spiritual consciousness overleaps itself and falls back intellectually on primitive confusions, morally on the purges and quasi-physical disinfectants of savage religion. It is much if purity of thought is insisted on as a condition and the worshipper is told that "he who enters the incense-laden shrine must be pure, and purity is to be of holy heart."[2]

---

[1] Harrison, p. 656.

[2] From an Orphic hymn, translated, *ib.*, 586.

A truer spirituality is to be found in the reasoned theism of the philosophers and the philosophic poets of Greece, whom the mob of educated and uneducated alike took for atheists, who were aware that the gods of the popular religion were beings made by man in his own image, that ethical purity must be attained by ethical and not by magic methods, and who first taught the world, what it has too often forgotten, that goodness and God are identical. These are the essential doctrines of a spiritual religion; they carry us outside the region of Polytheism, and their consideration must be deferred to a later place. For polytheism proper is outgrown when the stage of philosophic reflection is reached. Its anthropomorphic deities belong to the phase of thought which intervenes between the primitive confusion of categories and the philosophic movement which establishes the leading conceptions found in experience as clear-cut, independent objects of thought. It is the stage of the plastic imagination in which the mind is fully capable of forming for itself a concrete imagery of things unseen with all the articulateness and vividness of so many objects of perception. Its fictitious personalities are no longer mere pallid doubles of this or that function. They are many-sided beings with distinctly conceived attributes and a regular life history. If their origin is traceable to animistic confusions, if their birth is in some primitive personification of a function or an attribute, their adult life is passed on a higher plane. Their world is articulate in the sense that its parts are not only distinct but interconnected. The gods are related by ties of blood and political subordination, and in so far as each is responsible for some great department of nature or human life, the theogonies which form an integral part of polytheism may be said to form a first attempt, not perhaps at a theory of the universe, but at an imaginative picture of the agencies by which its framework is maintained. The thought of the polytheistic stage is wider in its reach, just as it is more distinct in its representation, than that of animism. Its departmental gods represent a wider grouping of phenomena in proportion as a god of vegetation has a wider scope than the spirit of this particular plant. The endeavour to connect the several gods represent an attempt at a still wider interconnection of the parts of human experience. But all these endeavours go on in the form of concrete imagery and without any critical test of truth or any reflective examination of the conceptions used. The world of ideas is now a picture with many clearly drawn figures in which the several categories are no longer hopelessly interchanged and confused, but the thoughts imbedded in this picture are not yet separated out and held before the mind as objects of critical examination. It is a world whose parts exhibit some order and interconnection, wherein a wider grouping of the phenomena of the perceptual world is mirrored, but this order is built up by imagination with the aid of fanciful analogies and ill-understood myths, adding little to the rational insight into the actual scheme of things.

---

[1] See Harrison, pp. 587–589.

[2] *ib.*, 479. *Ὅσια*, rendered as holy, means the righteousness which the gods ordain, and is not confined to matters of ceremonial.

CHAPTER II

ETHICAL CONCEPTIONS IN EARLY THOUGHT

1. IN the world of thought dominated by Magic, by Animism, or by Polytheism, what account do men render to themselves of the basis of conduct? What reasons do they give for the rules which they acknowledge, and what do they suppose to be their meaning and end? How does the violation of rule affect them, and how do they act when such violation has occurred? To these questions no single and simple answer can be given.

No doubt, as was said at the outset, custom is binding upon primitive man, and binding upon him in truth because it is custom. But while this is the real moral force which the onlooker recognizes as the essential point, primitive races have often a definite conception of their own as to the reasons of their obeying custom. Not infrequently its breach will bring misfortune upon the wrong-doer, on some one connected with him, or on the community. Thus the Aleuts hold that the whale avoids dissolute tribes, on which account whalers must avoid women during the fishing season. But the whalers may have to suffer for the sins of others as well as their own, for the whale would punish them if their wives were unfaithful during their absence, or if their sisters were unchaste before marriage.[1] Similarly, the Australians hold that certain breaches of custom cause the Erkincha disease and other penalties.[2] Among the Eastern Eskimo, though abortion and infanticide are common, an opinion is growing against them on the ground that they bring misfortune in the village where the child's wailing is heard.[3]

The process whereby breach of custom thus brings about its own penalty is not always easy to trace. The cases in which we have full information, however, fall into two principal classes. In the first, the connection is "direct," *i. e.* an evil influence is set up by the misdeed which, like any physical cause, produces disease or whatever the bad result may be: these cases are in line with primitive magic. They involve what we have called the *materia magica*, and so, though no magician and no magic art is necessarily involved, the sanction may conveniently be called magical. In other instances the trespass is held to offend a certain spirit, or possibly to put the evil-doer or his friends into the power of the evil spirit. This conception belongs to the department of animism, and here the sanction may be called religious. Finally, the two conceptions can be blended, magical and religious elements being entangled together.

---

[1] Reclus, p. 52; *ib.*, p. 67. Among the Konyaga loose behaviour is considered to be punished by difficult confinements.

[2] Spencer and Gillen, vol. i. pp. 168, 411, 471; cf. Howitt, *Organization of the Australian Tribes*, p. 104, and *Tribes of S.-E. Australia*, p. 296.

[3] Reclus, p. 34. According to Westermarck (p. 61) unchastity on the part of a girl is considered by the natives of Loango to bring ruin on a country, and some of the Dyaks think that a pregnant unmarried woman is offensive to the superior powers (*ib.*, 63). Among the Atkha Aleuts purification was required for sexual immorality (Yakof, U.S., 10th Census, vol. viii. p. 12).

To begin with magic influences. When the Dakota violates a female captive or breaks the rule of continence upon the war-path, he not only displeases the spirits of the deceased, but also the "war-medicine," and on both grounds brings down misfortunes on his party.[1] Taboos on intercourse have been frequently mentioned as forming a large portion of primitive life, and as influencing the marriage laws all over the world, and the taboo acts like a magical quality. For instance, the Australian native must not eat food killed by certain relations, nor generally food into which such persons "project their smell." Here the taboo is a quality which affects the food, and would directly injure the eater.[2] We have seen that over a considerable part of the savage world taboo is the method of protecting property, *e. g.* in Rotuma the natives are honest, but their honesty arises from the fear that if one touches the food of another the owner might kill him by its means.[3] In the Melanesian practice [4] the owner of the property controls the taboo. We are expressly told that it has no authority from a spirit.[1] The infectiousness of the taboo is, as we have seen, an important element in early criminal law, the offender who has broken the taboo transferring its dangerous character to himself, and so not only incurring a curse, but also involving himself in the penalty of exclusion from the community.[2] Thus the breaking of taboo carries its own punishment. The process works automatically and without need of the intervention of a spirit. In a quite similar way we have seen that some forms of oath and ordeal provide automatic punishments of perjury. A fetish object is laid on the stomach in Great Bassam, a stone is powdered and drunk in water in Ashanti. The operation in both cases is magical.[3] Often in early society the laws are protected by a curse pronounced by the people as a whole or by a priest as their representative on any one who shall break them. Thus, we have the well-known list of curses in the Book of Deuteronomy, and a quite analogous set of inscriptions recording the curses pronounced against offenders in the early Greek states.[4] In the same way, paternal authority is fortified by the power of the parental curse and blessing. This action is automatic, and though we may say that it incorporates an ethical idea it fails to work in strict accordance with ethical conditions. The operation of the magical agency is, if the term may be coined, paramoral—working by the side of the ethical principle, but not always on the same lines. The point is well illustrated in the story of the sons of Isaac. Jacob secures by fraud the blessing intended for Esau, and once given, the blessing cannot be withdrawn. It is quite comparable to a piece of goods made over once for all and not to be resumed. The most Esau can hope is that the store may not be exhausted—"Hast thou not reserved a blessing for me?" "Hast thou but one blessing, my father?"[5] Yet if the blessing were the true expression of the father's loving gratitude won by good service, Jacob should rather have had a curse for his deceit.

---

[1] Schoolcraft, vol. iv. p. 63. According to Schoolcraft-Drake (vol. i. p. 188) the Winnebagos attribute their respect for women in war to the direct command of the Great Spirit. Here the sanction is purely religious, but we have seen that the conception of the Great Spirit among the Red Indians is the centre of manifold confusion.

[2] Spencer and Gillen, vol. i. p. 469.

[3] Gardiner, *J. A. I.*, vol. xxvii. p. 409. We have referred above to the imprecations pronounced over the boundary-stones by the Babylonians. The imprecations would make the stone itself avenge any disturbance of it (Maspero, p. 762). Similarly the stones set up by Laban and Jacob are witnesses to the division of the land (Gen. xxxi. 45–52). At a later stage the stone has become inanimate, but a curse on any one who shall move it is pronounced by the whole people (Deut. xxvii.). The curse is still the punishment, though its operation is perhaps theological rather than magical.

[4] Referred to above, Part I. chap. viii.; Part II. chap. i.

2. Grotesque as the magical doctrine of punishment appears when stated in set terms or illustrated in concrete practice,

---

[1] Codrington, *J. A. I.*, vol. x. p. 279. Compare the use of stones by Eskimo (Reclus, p. 110, and cf. Tylor on the mending of hedges by a cotton thread among the Kunama, *Contemp. Review*, 1873, p. 704).

[2] See Jevons, *Introduction to the History of Religion*, pp. 70–87.

[3] Post, *A. J.*, ii. 107, 108.

[4] Deut. xxvii. 15 et seq. Cf. Harrison, p. 142, for selections from the "Diræ of Teos." "Whosoever maketh baneful drugs against the Teans, . . . may he perish, both he and his offspring," etc.

[5] Gen. xxvii. 36–38.

puerile as the whole machinery of magic stones, avenging beans, and death-dealing gibberish looks when viewed from behind the scenes, yet the conception of an inherent retribution following as an automatic consequence of the wrong act lies close to the permanent moral consciousness of mankind, closer than the alternative theory of punishment *ab extra* inflicted by a vengeful spirit or a just god. For here as elsewhere, the magical doctrine merely crystallizes a diffused psychological state into a material object or a physical occurrence. We can all put ourselves without the slightest difficulty into the mental attitude of the savage who breaks a taboo. We have many things that are taboo to us and we know what it is to handle them. Whatever we believe or disbelieve in religion or in morals, there remain for all of us certain things to do which affects us with a greater or less degree of mental discomfort, varying from uneasiness to acute remorse or the extreme of cold self-horror. These are in strictness feelings attendant or consequent upon the action. Externalize them, turn what we feel about the act into some physical attribute of the thing or person with which the act is concerned, some noxious emanation, some death-dealing "smell," and the feeling becomes a taboo. Once again, take away the taboo and at first sight the basis of the feeling seems to be removed, and moral obligation to disappear. But then comes a rational consideration of the whole circumstances of the case—the deliberate view of the total effect of the bad act on our own character, on the lives and happiness of others, on the social order, on everything that we hold in affection and esteem. On this view we can see that our horror has its legitimate function, that it has grown up as an integral part of the conditions which constitute us fit members of a human society, so that before we can reason out all that a bad act implies we have a feeling about it in which those consequences are in a manner represented. Now this feeling is the great permanent fact of the moral consciousness persisting through all stages of development. The conceptions to which it gives rise vary greatly, and their variations affect and are affected by the whole scope and character of practical morality, so that their history is the history of moral development. The simplest of all ways of conceiving the facts is that of attributing malefic quality to the bad act itself—the act, or some person or thing affected by it, taking on itself by the primitive mental process of assimilation the quality of the mental feeling which arises in us when the act is contemplated in our minds. So near, indeed, is this to the permanent tendencies of the moral consciousness that language to this day speaks of the act as noble, base, or horrible, as if these were qualities attaching to a physical event, and not expressions for feelings which the physical event excites and psychological and social consequences that follow from it.

We may even go a step further, and say that in considerable measure wrong-doing is still conceived rather magically than ethically. Take, for example, the case of sexual intercourse. It is hardly too much to say that for the average moral consciousness this is still held to be sanctified by marriage as by the removal of a taboo, so that neither the production of children without means to maintain them, nor the indulgence of physical passion without psychical love, is strongly condemned when covered by the ceremony. On the other hand, the woman who breaks the taboo uncovered by the ceremony is stamped once for all with the scarlet letter, without regard to the question whether she was the experienced temptress or one whose fault was merely to have loved and trusted too much. She is marked, tabooed. Though condemned most loudly by the self-styled "moralist," the condemnation of her, in nine cases out of ten, is not really moral—that is to say, based on a rational view of her character and its potentialities for good and evil, but magical, based on a supposed bad quality, acquired once for all by the breach of a taboo, in view of which she is a piece of damaged goods in the social market. And, like all magical qualities, the taboo is eminently infectious, and all respectable women are seen gathering their skirts about them to avoid that contact with the offender which would communicate the stain to themselves.

On the other hand, a man may be said to incur a magical rather than an ethical condemnation in cases of cowardice and perhaps of certain kinds of dishonesty. The "prison-taint" hangs in a measure about one who has ever been convicted and degrades him below much greater criminals who have kept within the law. In all these matters the function of the ethical thinker is to plead for that rational consideration of character and conduct, that *συγγνώμη*, which is the truest safeguard against Pharisaism, and which, making us aware of the extreme fallibility of our judgments upon other people, bids us confine such judgments to the minimum point requisite for regulating our dealings with prudence and justice. We must so far "judge" a convicted cheat as to beware of trusting him for the future, but as to the intrinsic worth of his character when all is summed up, and how it compares with that of many who need no repentance—of this, omniscience alone can judge. "Judge not" is a standing protest against magical condemnations.

3. Close as the magical judgment stands to the permanent conditions of the moral consciousness it is not the only form in which the primitive mind conceives the sanction of conduct.

As the belief in spirits generally accompanies that in the efficacy of magic, so the magical conception of punishment very readily yields to or blends with the conception of spiritual intervention. Thus, the oath often takes the form of invoking the vengeance of a spirit.[1] In the case of the North American Indians we have seen that the spirit and the "war-medicine" worked together to secure self-restraint. The Dakotas attribute bad luck in hunting to an offence committed by some of the hunter's family against the spirits of the dead. The taboo on an offender may be due to the fact that the spirits are wroth with him. Thus, a murderer may be avoided because he is pursued by the ghost of his victim and, again, the avenger of blood who fails to do his duty may himself be pursued by the indignant spirit of his slain relative. We are not, indeed, to suppose that the ordinary spirit of animism has a detached or impartial interest in human conduct; on the contrary, animism is for the most part non-moral, and a good deal of it is immoral. There is no reason why the spirit of a river should be any more concerned with morality than the river itself, while, on the contrary, there is some reason why the spirit of a disease should be more immoral than the disease itself, for, abstracted from the spirit which guides or animates it, smallpox is not a being which bears ill-will to men, but the spirit of smallpox is a monster going about seeking whom it may devour, and perhaps demanding sacrifices to appease it. Hence, savage animism tends often to what, from our point of view, are cruelties and immoralities which would otherwise not occur. The spirits of men, however, may be naturally expected to look upon conduct just as men themselves do, and consequently will applaud the good and reprobate the evil in the same way. Here is a possible means of connecting religion with morality which is not left altogether unused in the savage world. Thus, the Manes become the natural guardians of morality in the family; the son who kills his father is naturally punished by the ghost just as he would be by the living man had his blow not been fatal.[2] It is but a slight extension of this idea that the spirit of the father should avenge other crimes, or that the spirits of remoter ancestors should participate in the vengeance, so that the boy who strikes his father or mother "is devoted" to the *Divi parentum*,[1] or that a similar fate should punish other crimes in a family such as incest or cruelty to a mother.[2] Again, when customs have been first instituted by an ancestor or a predecessor of an heroic age his spirit continues to take an interest in their observance, and he is angry with and perhaps punishes those who disregard them. As far down in the scale as the natives of South-Eastern Australia we find spirits of this kind. The tribes north of the Herbert River recognize a being called Kohin, who once came down to earth, but now has his home in the Milky Way, though he roams about by night on earth, killing those whom he meets. He is offended by breaches of the marriage taboos, by the eating of forbidden food, or by neglect to wear mourning for the prescribed period, and sooner or later the offending native dies.[3]

---

[1] Post, *Afrikanische Jurisprudenz*, ii. 127.

[2] See Leist, p. 314, who quotes *Iliad*, xxi. 412; *Odyssey*, xi. 280. The only doubt in such passages is whether it is the curse or the ghost of the parent which operates.

4. The spirit of animism, however, is not as such a moral being whom wickedness offends: he is concerned only with the conduct which affects himself, and so animistic religion often presents itself in the mass as wholly non-moral.[4] The savage prays in the

---

[1] Law of Servius Tullius (Bruns, p. 14).

[2] Leist, p. 320, quoting *Iliad*, ix. 454, and *Odyssey*, ii. 134.

[3] Generally speaking, in South-East Australia "a belief exists in an anthropomorphic supernatural being who lives in the sky, and who is supposed to have some kind of influence on the morals of the natives" (Howitt, p. 500).

Mr. Howitt adds that "no such belief seems to obtain in the remainder of Australia"; and Messrs. Spencer and Gillen declare still more definitely that the Central Australian natives "have no idea whatever of the existence of any supreme being who is pleased if they follow a certain line of what we call moral conduct, and displeased if they do not do so. They have not the vaguest idea of a personal individual other than an actual living member of the tribe who approves or disapproves of their conduct, so far as anything like what we call morality is concerned" (Spencer and Gillen, vol. ii. p. 491).

The only possible exception is in the case of the Kaitish tribe, who recognize a superior being called Atnatu, who is displeased if the bull-roarer is not sounded in the initiation ceremony.

[4] Thus, Captain Ellis denies broadly that there is any connection between religion and morals in any of the three peoples of whom he writes (the Tshi, the Ewe, and the Yoruba), because, he says, the savage only revenges what affects himself (*Yoruba*, p. 293). Other instances that I have found scattered among the accounts of a large number of peoples are the following. In Africa, among the Basonge the ghost of a father appears to his son in a dream and chides him for bad conduct (Overbergh, *Mon.*, iii. 325). Among the Koita of New Guinea the ghost would punish any neglect of funeral rites and any infringement of tribal custom (Seligmann, p. 191), while, among the Roro tribes, the ghosts bring good luck, but if annoyed by too much quarrelling among the women, may spoil the hunting (Seligmann, p. 310). The Fuegians are said to believe in a spirit in the form of a big black man, who sends storms when they do wrong (Garson, *J. A. I.*

simplest and most direct manner for the fulfilment of his desires, without the smallest regard to what we should consider moral obligations. The warrior does not even stop to explain the justice of his cause to the deity as more civilized men are wont to do. "Great Quahootze," prays a Nootka Indian in preparing for war, "let me live, not be sick; find the enemy, not fear him; find him asleep and kill a great many of him."[1]

The spirit is moved by the same considerations which move the savage himself. An offering pleases him and he will pay for it. He may be expected to stand by his friends like a primitive man, and hate his enemies, according to the same model. For the rest, his character is drawn from the object which he animates, or the process which he personifies, or the function over which he presides. Thus, if he is a disease spirit he is evil, and the very living worship of evil spirits together with the comparative neglect of those which enjoy a good character is in itself a strong mark

---

xv. 145). Where higher gods come into play, the ethical influence is more often noted. Thus, among the Coast Salish, the Great Transformer will some time descend from heaven again and punish the bad (Boas, *B. A.*, 1890, p. 580). The Comanches, according to Schoolcraft (ii. 225), believe that the Great Spirit punishes them for lying and other offences. Among the Winnibagoes respect for women in war is said to be enjoined by the Great Spirit (Schoolcraft, iv. 53). Among the Tsimshian, though we do not hear of future retribution, heaven hates murderers, adulterers, and foolish talkers, while it loves those who pity the poor and do not try to become rich by selling dear (Boas, *B. A.*, 1889, p. 846).

Among the Blackfeet, the sun is all-beneficent, and good to those who do right. Penances are done in the medicine lodge to please him, and a woman, anxious for a sick child, builds a lodge to the sun and vows she has not committed adultery (Grinnell, *Blackfeet Lodge Tales*, 258, 264). Among the Paharias, he who obeys God's commands must neither injure, abuse, beat, nor kill any one; nor rob, nor steal, nor waste food and clothes; nor quarrel; but he will praise God morning and evening, and women must do this too. Such a man is born again as a chief, while others become animals (Dalton, p. 265 seq.—some doubt as to authenticity). Among the Kayans, Hose and McDougall state that fear of the toh serves as a constant check on the breach of customs, while the part which the major spirits, or gods, play, remains extremely vague. On the whole, the gods make for morality but, "except so far as conduct is accurately prescribed by custom and tradition, their influence seems to be negligible" (ii. 204). Among the simple Punans, "religious beliefs probably influence their conduct less strongly than do those of the Kayans" (*ib.*, p. 187). The Karaya are said to have no morals in their religion (Ehrenreich, *op. cit.*, 34). In British Guiana, im Thurm denies any connection of morality with animism (*op. cit.*, p. 342). The Gonds are said to have no moral deity (Forsyth, *Highlands of Central India*, 145). The Batak religion is said to be wholly non-moral (Müller, *op. cit.*, p. 13). Compare Tylor (*Contemporary Review*, April 1873, p. 710) on the Papuans and Caribs. Speaking generally, Professor Tylor considers that savage animism is almost devoid of the ethical element (*Primitive Culture*, vol. ii. p. 360).

[1] Tylor, vol. ii. p. 366, where a number of similar prayers for direct material advantages are given.

of the low ethical standard of animism. As an ancestor who cares for the family welfare, as protector of a special place or a class of people, or as the avenger who may be called upon in the formula of an oath, a spirit may resent injuries or insults affecting his authority. It is only in this indirect manner that the lower animism provides a sanction of conduct.

A step forward is taken when spirits arise which are themselves personifications of the moral order, or of some portions thereof. We can conceive such impersonations arising either on the basis of animistic or of magical conceptions. What is essential is that they should embody a certain disinterestedness which transforms their action from the sphere of mere resentment to that of justice. Thus, as long as the father's spirit is merely acting in revenge of a personal injury, it is not really a moral agency, but if it is held to supervise the family laws without reference to its own interests, it begins to be a disinterested judge. Similarly, there is nothing moral in the action of a curse as such, but if the curse, having materialized into a quasi-spirit, is set in motion by certain specified breaches of morality, and by those only, it has acquired a more judicial character. We seem to see a transition of this kind going on the case of the Erinys. At first probably a "dark-flitting" curse which can be set in motion, for example, by the angry parent, or the despised suppliant, it is already in Homer a spirit dwelling in Hades, and a hard-smiting goddess who avenges wrongs. At times it seems to come without regard to any other considerations at the bidding of those who have the right to call on it. Thus, for his unwitting sin against his mother, Œdipus suffers "all that the Erinyes of a mother accomplish."[1] The father of Phœnix, though he certainly had little right on his side, called on the hateful Erinyes, and his curse was accomplished.[2] Iris reminds Poseidon that the Erinyes always wait upon an elder.[3] At times, too, the Erinyes seem to be carrying out a vicarious punishment with a certain blind and mechanical fatality, as when the Harpies carry off the daughters of Pandareos, notwithstanding all the goddesses had done for them, and give them to the hateful Erinyes to haunt them on account, apparently, of their father's crime.[4] At other times the Erinyes are rather the avengers of certain wrongs, of the despised beggar,[5] and of the broken oath—for which "beneath the earth they punish men." Here they are really protectors of certain branches of the moral law. Thus, what is at one point merely a curse embodying the resentment of an injured party, becomes at another a spirit dwelling in Hades, flitting in the dark and smiting hard when set in motion by those who have the power to do so, and in yet others a spirit watching over certain branches of morality. In the first case, where the curse is a mere instrument of revengeful feeling, there is nothing specifically moral. In the last, where the curse falls impartially on any breaker of given laws, the moral element is clear. Between the two, the curse that can be set in motion by definite authorities under definite conditions seems, at least in the case of the Erinyes, to be the link.[1]

---

[1] *Odyssey*, xi. 280.
[2] *Iliad*, ix. 454.
[3] *ib.*, xv. 204.
[4] *Odyssey*, xx. 60–78.
[5] *ib.*, xvii. 475.

The Erinys is still the avenger of wrongs done to individuals and of special cases of wrong-doing,[2] but in the goddess Themis the Greeks of the Homeric age had a more generalized conception of a patron of justice. Themis is distinctly a goddess, she receives the gods at their gathering for the banquet on Olympus,[3] but she has a double relation to human justice—in the first place, a general oversight; and in the second place, a special regard for the divine traditions which are ever growing up through the decisions of oracles, the ἱερὰ καὶ ὅσια, and to her sphere belong those customary rights which, in early society, men who are unprotected by belonging to a family have no human means of enforcing, and thus in particular the stranger and the beggar and the suppliant are under her care.[4]

While the Erinyes and Themis are strictly independent beings, their functions become closely associated with the gods,[5] and especially with Zeus, the chief god of Olympus. Zeus acts in accordance with Themis. In the *Iliad* he already punishes unjust decisions with storms,[6] and in his capacity of Zeus Xenios is the special protector of the stranger and suppliant. In each several capacity he appears under the appropriate name—

As Zeus Timoros, he is the god of retribution; as Zeus Hikesios, the god to whom the suppliant flies; as Zeus Apotropaios, he is the averter of ill; as Zeus Horkios, the god of the oath, who punishes perjury, and by whom the Athenian judges swear.[1] The different epithets are themselves half personifications, and Zeus is in a sense a different being in each capacity, just as in the mediæval world Our Lady of Embrun was and was not the same being as Our Lady of Paris. The function wavers between being a god itself and being only the attribute of a god. But in the most logical anthropomorphism, Zeus is one god who supervises the moral order generally, and whose punishments are carried out by the Erinyes. The spirit of animism serves the gods of the higher stage.

---

[1] I am indebted to Mr. A. Sidgwick for a valuable note in which the above passages, with others, are collated.

[2] In later thought, as in the well-known fragment of Heraclitus, the Erinyes appear as guardians of "law in the universe." They "preserve the stars from wrong." On the whole subject, see Miss Harrison's work, pp. 213–239, and Leist, pp. 320, 321.

[3] Leist, p. 207; *Iliad*, xv. 87.

[4] Leist, p. 211.

[5] In the case of Phœnix, mentioned above, though the prayer is addressed to the Erinyes, the curse is carried out by Zeus of the underworld and Persephone. Both Erinyes and gods attend on the beggar (*Odyssey*, xvii. 475).

[6] *Iliad*, xvi. 385, quoted by Leist, p. 209.

The greatest of the sons of Zeus had also a large part to play in the ethics of Greece, and particularly in the side of ethics that touches law, statecraft, and inter-state relations. The special connection of Apollo with the πόλις dates from an early stage of his career.[2] Participation in his sacra is at Athens a test of civic status, and he is especially associated with the admission as matter of law of a justifiable homicide that needs no more than ceremonial purification.[3] Though not ashamed to be a slave-owner himself, he assisted in the emancipation of slaves. His oracle, without having any idealistic message for Greece, teaches the current morality at its best, dwelling on moderation and restraint, insisting on the inward side of conduct, denouncing perjury and breach of trust.[1] But beyond all this Delphi became something of a spiritual centre for all Greece, and it was a genial centre, making not only for national harmony and inter-state justice and good faith, but for higher civilization and artistic and intellectual development. As the guardian of the πόλις Apollo was the patron of colonies, and Greek expansion was guided, if not stimulated and promoted, from the spiritual capital.[2] His worship made for the recognition of the common Hellenic bond, and is associated with the development of the method of settling inter-state disputes by arbitration which was the needed corrective to the separation of the Greek states and is the model of our nascent international justice. The Delphic religion failed by the very μετριοτης, which was its chief virtue, to raise the whole religion of Greece to a higher plane, but it gave the sanction of the religious tradition to the workaday morality of the private citizen, the jurist, and the statesman, and that—unlike so many religions—without let or hindrance but with actual sympathy and happiness to the thinker and creator.

---

[1] On the moral functions of Zeus, see Farnell, vol. i. p. 64 ff. We get a similar development in the Roman religion. Here the tendency to deify abstractions, actions, or functions is early and persistent. Thus Saturnus suggests no personality, but rather a sphere of operations (whether we take the name as referring to sowing or seed maturing in the soil), in which a certain *numen* is helpful" (Warde Fowler, *Roman Religious Experience*, p. 118). It is probable that many of the more specialized function-gods (Sondergötter) are of later origin, but if this is so it illustrates the persistence of the tendency in the more formal stages of a relatively organized religion (*ib.*, pp. 158–164). Now gods of harvest functions have no peculiar moral interest, but we also have Spes, Concordia, Pudicitia, Pietas, etc., who foster the appropriate qualities. These are mere spiritualized abstractions, and bear the same relation to Hope, Concord, Modesty, and Piety that the spirit of an object does to the object itself. But we also find that the function-spirit is associated with one of the greater gods as his epithet: for instance, we have Fides associated closely with Jupiter. Fides is the spirit who protects the oath; Jupiter as Deus Fidius is the god who protects the oath. Public acts of the nation are sworn by Jupiter Lapis, in which there is probably the blending of a god with a fetish. While Faith is an attribute of Jupiter, Faith has also her own cult and temple close to the Temple of Jupiter. In the same way Victoria is worshipped as well as Jupiter Victor, and Libertas along with Jupiter Liber. As the tendency to personify abstractions persisted in Rome, some of these epithet-gods may even be later in time than the gods themselves, but be that as it may, they illustrate the same ambiguity between the god and the function which we find in the Greek religion. See Wissowa, *Religion der Römer*, especially pp. 22, 47, 48, 103 ff.

[2] Farnell, vol. iv. p. 161.

[3] Whether religion took the lead in this reform, as Dr. Farnell is inclined to think (pp. 177, 306), or whether we should say rather that a higher and more human religion provided means of wiping away a stain which lower magico-religious ideas first imputed, is a question which cannot in this special case be definitely resolved.

5. In the conception of a supreme god, the protector of the whole or of the most essential part of the moral order, we have come to the threshold of a spiritual religion, but we have not yet arrived at the conception of a moral order of the universe, nor at the principle that God is good of necessity because he is God. The immoralities attributed to the gods of polytheism are notorious, and though it is fair to urge that they belong to the world of primitive conceptions wherein the gods had their birth, still, the very fact that they are retained militates, as the Greek philosophers knew, against a spiritual religion. The gods themselves suffered punishment for their wrong-doing. Apollo was compelled to become the slave of a mortal, and a regular penalty of eight years passed without nectar or ambrosia lay upon the Olympians who swore falsely by the Styx. If the gods are interested in sin, they are appeasable by sacrifice, and for occult reasons which the polytheist never made clear to himself, but which were associated with his conception of vicarious responsibility, the gods themselves put the impulse to sin into

---

[1] Farnell, IV. 211. For the betrayal of the suppliant, cf. the well-known story of Glaucus (Herodt., VI. chap. 86). Perhaps more remarkable for a richly endowed oracle is the doctrine of the widow's mite (Farnell, 210) and the depreciation of magical purification (*ib.*, 212).

[2] *ib.*, 200.

men's minds. The Ate, which compels a man to folly or crime, is a curse implanted in his mind by that same Erinys who will avenge the deed, and punish him for following the impulse implanted by herself.[1]

6. Meanwhile, the connection of religion with morals develops on another line; the misfortunes which follow wrong-doing may not be manifested in this life, but whether conceived as the automatic consequences of the act, or as due to the wrath of the spirits, they may fall upon the soul in its life beyond the grave. In an elementary form the conception of retribution in a future life appears within the savage world, and though in many cases it is probably imported from civilized religions, there is no reason to doubt that there are uncivilized peoples among whom it has grown up spontaneously. The normal theory of animism, however, conceives the soul as continuing to live a life comparable to that which it enjoyed upon this earth, and dependent upon similar conditions. Its well-being depends, not upon its own actions in this life, but upon its receiving proper care from relations and descendants after death. It must be suitably buried, properly housed, and duly fed. And this remains the dominant conception upon which notions of duty to the dead depend, even when other elements enter in. These elements appear in different forms which are by no means wholly ethical in character. Sometimes the future life is itself a privilege of caste, as among the Tongans.[2] Sometimes the fate of the dead depends on the manner of death.[3] Among the Nairs the childless woman will suffer in the future, a conception which perhaps connects itself rather with the necessity of the support of the dead soul by children than with retribution proper.[4]

---

[1] *Odyssey*, xv. 233, cited by Leist, p. 321. Compare *Iliad*, xix. 87, where Agamemnon excuses his folly (ἐγὼ δ' οὐκ αἴτιός εἰμι) because "Zeus and Fate and dark-flitting Erinys" put a wild infatuation into his mind. The infatuation (ἄτη) three lines lower is herself a goddess and daughter of Zeus, "who moves through the heads of men injuring them"—a capital instance of the interchange between magically conceived quality and spirit. At a later date, especially in Æschylus, there is an attempt to elaborate the theory of Ate upon the principle of vicarious justice. A father brings down a curse which besets the children and the children's children, all of whom add to the guilt until the accumulated iniquity is washed out by a tremendous catastrophe. In Herodotus we have a similar order of ideas, but with a special stress on the overweening presumption of the individual which awakens the jealousy of God and brings down punishment.

[2] Tylor, vol. ii. p. 22. Sometimes the dead retain in a future life the social position they held in this: *e. g.* among the Yoruba (Ellis, p. 127).

[3] Thus, among the Micronesians, those who die in peace reach Paradise while others fall into hell (Waitz, vol. v., ii. p. 142).

[4] Reclus, p. 159.

Among the Western Eskimo the soul has choice of two abodes, one above and one at the bottom of the sea, which is preferred as less inclement. Here dwell heroic whalers, men who have committed suicide rather than burden their families, and well-tattooed women who have died in childbirth; others get there only by crossing a narrow bridge, or by other dangerous and hurtful paths.[1] The Ainu hold that while all spirits go to Hades, the good pass on to the place of God, and the wicked to the wet underground world, a message from the Creator being sent through the fire-goddess to direct where the soul is to go.[2] Often the warriors retain their supremacy in the world to come: the primitive Norseman continued to fight and to feast in Walhalla, and similarly the Tupinambas of Brazil think that those who have lived well—*i. e.* those who have well avenged themselves and eaten many enemies—will live in beautiful gardens, while cowards will be tormented.[3] Generally speaking, the savage view of the future life, in proportion as it deserts the strict theory of the continuance of the present mode of life, is ill defined and extremely confused. The soul haunts the grave, and requires supplies, and yet it goes to another world, or is reincarnated in another human being or an animal. How far it is really the merits of the deceased that determine his fate and how he is judged, or by what method his sins are weighed against his virtues, it is generally very difficult to determine.[4] The evidence

---

[1] Reclus, p. 103. Among the Central Eskimo those who have been kind to the poor and hungry, and have been happy on this earth, those who have been killed by accident, suicide or violence, and women who have died in childbirth, get to heaven; while murderers, the unkind, other offenders, and those who die of disease go to Sedna's house and cannot leave it (Boas, *R. B. E.*, 1885, p. 590). Among the Behring Straits Eskimo, those who die naturally go to the underworld, but thieves, sorcerers, witches, are in some way uncomfortable after death (Nelson, *R. B. E.*, xviii. 423).

[2] Batchelor, *The Ainu of Japan*, p. 236.

[3] Tylor, vol. ii. p. 86. Other instances of savage belief in retribution are quoted by Tylor, p. 93.

[4] Among a large number of ethnographical papers chosen for accounts of secular custom I have found the following references to *Future Retribution*—

In North America the *Creeks* are said to believe in future retribution (Bartram, *Trans. Am. Ethn. Society*, 1853, p. 27); so did the *Natchez* (Le Petit, in the *Jesuit Relations*, vol. lxviii. p. 129).

Among the *Haidah*, murderers, thieves, those who disobeyed the shaman, were tormented in the cloud region, or if especially bad were turned into bears (Harrison, *J. A. I.*, xxi. p. 19).

Among the *Western Déné*, while the soul generally lived miserably on dry toads (Hill-Tout, *Ethnology of North America*, 178), it would seem that virtuous people might get a new birth (Morice, *Proceedings of the Canadian Institute*, vol. vii. p. 161).

Among the *Nootka* the world of souls is in the earth, but chiefs and taken as a whole indicates that a notion of future retribution arises occasionally in animistic religion in qualification of the

---

good men who always pray to the sun and moon, go to heaven (Boas, 1890, p. 597).

The *Loucheux* are said to believe in future retribution (Hardisty, *Smithsonian Reports*, 1866, p. 318).

But of the *Eastern Déné* it is said that their dim conception of the Great Spirit has no influence on conduct because there is no future retribution (Ross, *ib.*, p. 306).

The *Lillooet* thought that the soul of a man who had not supplicated the chief, or danced properly, would be lost (Teit, *Jesup Expedition*, p. 277). Among the Ojibways there was a happy place for the good departed, while cowards wandered in the darkness (P. Jones, *History of the Ojibway Indians*, p. 102). Among the Omaha, the spirit survives. According to two natives, the old men used to say the good men go to the good spirit and the bad to the bad one. The whole conception seems very vague (Dorsey, *Siouan Cults*, pp. 419–420).

The *Assiniboins* are said to believe that, when they get South, the good and brave find women and buffaloes, while the wicked and cowardly are confined to an island without pleasures (*op. cit.*, 484–485).

The *Mandans* also hold that the existence of the dead in the South depends on the nature of their life in this world, but here there is some evidence of white influence (p. 512), while the Hidatsa have the bridge story (p. 513).

The *Paressi* believe in future retribution, but probably under Christian influence (Von der Steinen, p. 435).

Among the *Caribs*, in the seventeenth century, it was thought that the dead would go to the Fortunate Islands, but cowards to a barren island, where they would be slaves (De Rochefort, p. 43).

The *Padam Abors* hold some sort of retribution, probably under Hindu influence (Dalton, 22).

The *Badagas* believe in retribution, and enumerate the possible sins of the deceased in order to avert it (J. F. Metz, p. 82).

They also let loose a calf at the funeral to bear the sins (Metz, and Rivers, *The Todas*, p. 377). A calf also figures in the Toda ceremony, possibly with the same significance. The Toda dead have to cross a bridge and the bad fall into a kind of purgatory, which, however, does not seem to have much influence on the people (Rivers, p. 399).

The *Sonthals* hold by retribution (E. G. Man, *Sonthalia*, p. 142).

The *Sakai* and *Jakun* build a house for the soul, and the *Semang* place food and drink on the grave. But it also seems that the souls have to cross a bridge, where the wicked fall into a boiling lake. We may here assume an external influence grafted on a primitive continuance theory (W. W. Skeat, *J. A. I.*, xxxii. 135, 138, and see below).

Among the *Singpho*, good spirits live in the sky, while bad ones become tigers and insects. In the plain the Buddhistic myth of the bridge across boiling water appears (Wehrli, *I. A. E.*, xvi. 52).

The *Bataks* of Palawan are said to believe in future judgment and retribution, but this may be due to Christian influence, as their burial ceremony suggests continuance (Venturillo, *I. A. E.*, xviii. 140).

Among the *Chenshu*, the Atkoor soul goes to God or becomes an evil spirit. The Nundials, on the other hand, are said to know nothing of God or the soul (Newbold, *J. R. A. S.*, viii. 277).

Among the *Larrakiah*, Foelsche says that a man in the ground, who made the first blacks, registers deeds in a book and requites them, but this notion must obviously be imported (*J. A. I.*, xxiv. 192).

In *West Victoria* the double survives, and the fire is kept up for its continuance theory, but that it is not the prevailing belief at this stage. Where found it is partial—certain special qualities or

---

comfort for three days. The good goes to a happy land and those that are bad to evil spirits below the earth; but this belief may be due to white influence (Dawson, *Aust. Aborig.*, 51).

Among the *Gournditch Mara* of this region, however, Stähle (*Kam. and Kur.*, p. 278) also mentions future retribution, and states that it preceded white influence.

Among the *Euahlayi*, there are three deadly sins which keep the spirit constantly moving in the lower world, where all is dark but for big fires. These are unprovoked murder, lying to the elders, or stealing women within the prohibited class (Mrs. K. L. Parker, *op. cit.*, p. 78). At the death of a man—not of a woman—there was a prayer to Baiamee to let the dead enter heaven because he had kept the Boorah laws.

In the *Banks Islands*, food is shared with the dead (Codrington, p. 271), but here ghosts of bad character are kept out of the land of the dead, *e. g.* a murderer by the ghost of the slain, and such ghosts, fearing to go to the bad place, turn back to earth, eat men's souls, and are wretched.

In *Pentecost Island* a murdered man tells other ghosts, who refuse to receive the ghost of the murderer (Codrington, p. 288).

The *Basonge* soul (Overbergh, *Monog.* iii. 324) goes to God and lives in a village within the earth. But he only keeps souls who have slandered their village, and others are re-born after a few months.

There are here about a score of instances which are probably free from white influence. But in nearly all it will be seen the belief is very partial—some particular offence or fashion being singled out—and very vague.

I noted also the following cases of continuance apparently without retribution, without including several in which continuance appears to be implied by the funeral customs but is not explicitly ascribed as a belief.

Continuance Theory—

Upon the Pacific Coast the *Kwakiutl* hold that the dead continue like the living (Boas, *B.A.*, 1889, p. 847.)

Among the *Tsimshian* the dead go to a place similar to that of the living (*ibid.*).

The *Thlinkeet* think that those who die a violent death go to heaven, and those who die naturally to a country beyond the earth (*ibid.*, 843). According to Swanton, an unavenged man could not get up to the higher regions; and bad persons are said to go to the Ravens' home. But this is possibly due to white influence (*R. B. E.*, xxvi. 461).

Among the *Eskimo of Labrador* a future life depends partly on conduct but mainly on the manner of death (Turner, *R. B. E.*, xi. 192).

On the *Thompson River* some souls are turned back by guardians from the Sunset Land, but for what reason I do not know (Teit and Boas, *Jesup Expedition*, 1900, p. 342).

Among the *Hidatsa* the soul goes to a place for the dead, where it receives the same regard for his qualities as here (Washington Matthews, *Ethnology and Philology of the Hidatsa Indians*, p. 49).

Among the *Delaware* the soul went South to a happy land, and on return was born again (Brinton, *The Lenni Lenape and their Religion*, p. 69).

Among the *Iroquois* how far future punishments were recognized is uncertain, but the journey to the South world certainly required supplies, whence the burial property of the dead (Morgan, *League of the Iroquois*, pp. 168, 174).

The *Shushwap* believed in a happy land for the dead (Teit, *Jesup Expedition*, 600).

The *Dakotas*, according to Schoolcraft (vol. ii. p. 197), have no ideas acts being selected for reward or punishment—vague and unsystematic. At this stage, in short, the belief is in a rudimentary

---

of future retribution. According to Riggs (*Contributions to Ethnology*, 1893, p. 213), the soul continues but its destiny is obscure.

Among the *Blackfeet* the souls go off among the sandhills, where they can be seen in the distance. They live for ever and their occupation is to fight with the Crees (Wilson, *B. A.*, 1887, p. 187). They are also said to prowl about the lodges, seeking to do injury (Grinnell, *Blackfeet Lodge Tales*, p. 273).

Among the *Kootenay* the dead are said to go to the sun (Chamberlain, *B. A.*, 1892, p. 559).

Among the *Greenland Eskimo* there are two regions for the dead but no clear retribution. The mode of death and the treatment of the body affect the destination (Nansen, *Eskimo Life*, pp. 234–237).

Among the *Hoopa* in California, shamans and singers at the dance go to the sky; all others, without regard to good and evil, go to the underworld (Goddard, *Univ. Calif. Pub.* I. p. 74). Kroeber (*Religion of the Indians in California*, iv. p. 346) says that no ideas of future rewards and punishments based on conduct in this life have yet been found in this region. The dead go below the world, or cross the ocean and are occupied in dances. Powers, however, found traces of retribution among the Wintun and the Yurok (*Tribes of California*, pp. 58, 240). These may very well be importations from the white man.

The *Comanches* believe that the dead go to a happy land (Ten Kate, *Revue d'Eth.*, vol. iv. p. 134).

Among the *Similkameem* the spirits of the dead were vindictive and had to be appeased by feasts, but the soul might pass into an animal (Mrs. Allison, *J. A. I.*, xxi. 310, 313).

Among the *Shingu* spirits retain the characteristics of this life. There is no true retribution (Von der Steinen, p. 349).

The *Karaya* dead re-visit the village. There is no belief in retribution (Ehrenreich, *Veröff Kön. Mus.*, Band I. p. 34).

In *British Guiana* there is both an idea of transmigration and of a country beyond the sky, but no future retribution (im Thurm, *Among the Indians of Guiana*, pp. 349, 359).

Among the *Guaycurus* souls of chiefs and of medicine men go to the moon. Those of common people roam about the plain (Von Martius, i. 233).

The *Ges* appear to hold a continuance theory, as they dig up the dead man after a year, tell him all that has happened, and re-bury him (Von Martius, p. 291).

The *Araucanian* dead re-visit the earth as spirits (Latcham, *J. A. I.*, xxxix. 345).

Among the *Aucas* the future life is across the sea in a rich land (D'Orbigny, *Voyages*, ii. 258).

Among the *Mataccos* the spirits of the dead go to an underworld, but if not buried, wander unrecognized (Pelleschi, *Eight Months on the Gran Chaco*, p. 87).

Among the *Chahkata* arms and clothes are placed in the grave, but the chiefs deny survival and say that the custom is a mark of affection and reluctance to use the dead man's things (Dalton, p. 19).

The *Miris* provide the dead with all the necessaries for a journey (Dalton, p. 29 seq.).

Among the *Gonds* the spirit of the head of the house haunts it until laid after a year or two, and meantime is worshipped (Crooke, II. p. 435).

Among the *Oraons* men who are killed by tigers become tigers, otherwise there is said to be no survival; yet rice is put in the mouth of the corpse state. In the higher stages of polytheism, on the other hand, the theory of the future life is often, though not always, more

---

and a coin is given to it, and we are told they believe in ghosts (Dalton, p. 247 seq.).

Among the *Bheels* food for his journey is placed by the corpse and afterwards thrown into the water by the side of which he is burnt (Crooke, II. p. 50).

The views of the *Kubu* are very uncertain. Van Dongen could find no trace of religious belief among the Ridan Kubu. In another tribe they say they go back whence they came. The Djambi Kubu are said to have no cult and no future life. The Lekho Kubu worship ancestors, but future life has no more moral implications than things that depend on chance (Hagen, *op. cit.*, pp. 143–145).

The *Korwa* recognize no retribution (Crooke, *North-West Provinces*, III. 332).

The *Orang Bukit* are said to have no belief in persistence after death (Knocker, *J. A. I.*, xxxvii. 293).

The *Bataks* practise temporary burial for a period during which the ghost floats about the earth. No future retribution (Müller, *Batak Sammlung*, pp. 12, 13).

The *Sakai*. The Krau Sakai bury utensils with the dead but believe in retribution. The Bra Sakai also leave utensils with the dead but deny any future life and have no retribution. The Central Sakai leave the body in a hut, where it should be taken by a tiger (Wilkinson, *Papers on Malay Subjects*—"The Aboriginal Tribes," p. 46).

Among the *Punans* the dead cross a river and there is no future retribution (Hose and McDougall, ii. chap. xix.).

The *Warali* do not know where the soul goes (Wilson, *J. R. A. S.*, 1843, p. 20).

The *Katodis* burn the dead and know nothing of a future life (Wilson, *J. R. A. S.*, 1843, pp. 7, 26).

Among the Australians on the *Swan River* the soul feels chilled, and so fires are lighted after the burial. If a man is killed with a spear-thrust, the soul remains on the point, which is burnt that it may depart (Salvado, *J. A. I.*, vii. 289).

In *N.-W. Queensland* there is no future retribution (W. E. Roth, *op. cit.*, p. 161).

In *Victoria* the ghost would haunt the relatives if not avenged (Brough Smyth, *Natives of Victoria*, I. 107).

In *New South Wales* the ghost haunts the grave and the camp is deserted after death (Frazer, *op. cit.*, p. 83).

The dead *Narrinyeri* warriors go to the stars, yet may also walk the earth and injure their enemies (Taplin, in Woods' *Native Tribes*, p. 17).

Those of *Encounter Bay* have a future life with Nurrunduri, a tribal hero, but recognize no retribution (Meyer, in Woods, p. 206).

At *Port Lincoln* the soul goes to an island but needs no food. There is probably no original idea of future retribution. They seem to think that misfortune in this life may follow misconduct (Schürmann, in Woods' *Native Tribes*, p. 235).

In *Queensland* (J. D. Lang, *Queensland*, pp. 274–279) asserts a dim idea of a future life, but no judgment and, in fact, no religion.

The *Mycoolon* and allied tribes have a place for the dead in the sky, where they are looked after by a spirit (Palmer, *J. A. I.*, xiii. 291).

Among the *Kamilaroi* and allied tribes, according to Ridley (*J. A. I.*, ii. 269), some say that the good go to Baiamee, while the bad perish; others that all alike go to him; and yet others that the dead becomes a bird.

The tribes about *Lake Eyre* (Howitt, *J. A. I.*, xx. 89) say that the spirit goes to the sky, but that the Mura Mura punishes offences during lifetime.

precise. Among the Greeks, one view was that the heroes passed to the Elysian fields, while at any rate the worst criminals were

---

Howitt (pp. 432–434) mentions numerous *South Australian* tribes in which the dead appear as ghosts or go to the sky, but I do not see any case of retribution among them.

In the *Western Torres Straits* the soul wanders near the body at first, then goes to a Western island, but returns at nights (*Cambridge Expedition*, vol. v. p. 355).

In the *Eastern Torres Straits* ghosts finally went under the sea and hence to a distant land (*op. cit.*, vol. vi. p. 252).

Among the *Batua* the dead may appear, and are then appeased with a hut and food. They may also pass into the beasts (Hutereau, *Congo Belge*, p. 6).

The *Azande* bury amulets with the dead to help him to avenge himself (*ib.*, p. 22).

The *Banza* negroes and the *Bantu* of the Congo hold by transmigration (Johnston, ii. 362).

The *Bayaka* have an imperishable soul—doshi. A man slain in battle sends his doshi to avenge him. Big animals also have doshi (*op. cit.*, p. 641).

Among the *Bahuana* the doshi lingers in the air after death, visiting friends and haunting enemies, and persecuting relatives if the burial is not proper (Torday and Joyce, *J. A. I.*, xxxvi. 291).

The *Bangala* connect the dead with the living by a tube (p. 649) and the *Mangbetu* build a hut and bring food, which gives "pleasure" to the dead. Similar customs are found in many other Congolese tribes (pp. 650–652). Van Overbergh (*Mon.*, iv.) says that the Mangbetu place food in a hut for the dead, away in the bush, so that he may go there. They comfort a smoker by putting a pipe in his tomb. The future life depends not on merit but on rank (pp. 359, 377).

The *Ababua* corpse takes the nutritive part from the food set for it (Halkin, *Monographie Ethnographique*, i. 95).

The *Bangala* (Van Overbergh, *Mono. Ethn.*, i. 271) think that ghosts may return and kill people or enter eggs. Their view of future life seems uncertain, but there is certainly no retribution, and it would appear to depend on the status here. One account says that the soul goes to Djakombu (pp. 271–278).

Among the *Mayombe* (Van Overbergh, ii. 305) views of the future life seem to differ. Probably the ghost remains in the forests. Gifts of food are continued only while they are remembered (p. 289).

Among the *Nandi* (Hollis, p. 41) the shadow goes underground and enjoys the same fortunes as in this life. There is no retribution.

Among the *Masai* the ordinary soul perishes with the body, but that of a rich man or medicine man turns into a snake, and looks after his children, while some people are so important that their souls go to heaven (Hollis, pp. 307–308).

Among the *Melanesians* the soul continues after death (Codrington, p. 207), but in what way it is difficult to find. In some islands its abode is above, in others below the ground.

In *British New Guinea* the Koita soul goes to a mountain and lives just as on the earth, both as to rank, character, etc. Their life seems to be about as long as that of their memory on earth (Seligmann, *op. cit.*, p. 190).

Among the *Rora* the dead go to a place in the bush where food abounds, but on the way an evil spirit, like fire, intercepts them and asks if their nose and ears are pierced, in which case he directs them on.

Among the *Southern Massim*, the shadow spirits go to a world which is just like this but inverts day and night. They are received by cast into Tartarus. The Egyptian soul underwent a regular trial before Osiris, and the Mexicans had a Book of the Dead, similar to that of the Egyptians, giving a full account of the dangers through which the soul must pass, and in particular of its trial before the Judgment seat of Tezcatlipoca.[1] Thus the highest polytheism shows a tendency to the development and systematization of the vague ideas of retribution floating here and there through early religious beliefs, into an elaborate doctrine of future judgment. The development, however, is very irregular. We find nothing of it, for example, in the Babylonish religion, nor, till monotheism was well established, in that of the Hebrews; its place in the regular Greek cults is secondary, particularly in the earlier period, and it is only in connection with the Orphic mysteries that it comes to occupy a central position. In India, as we shall see, the rival doctrine of transmigration tends to take its place, though the two theories are also combined.

7. But the imperfect morality of the doctrine of future retribution is most apparent when we turn to the methods by which sin is purged away and future happiness is secured. This introduces us to a group of ethical problems which at every stage are treated in close connection with the prevailing conception of the ethical basis. These problems centre upon the relation of the imperfect human being to the moral law. By what internal merit or external grace preventing him does a man come to reject evil and choose good? How does he grow in grace? When he has done wrong what means of reconciliation are open to him? These are questions of what might be called moral dynamics, of the forces which the prevalent ideal of conduct can bring to bear on the individual. As such their character must clearly be determined primarily by the nature of the grounds on which morality is conceived to rest. At a later stage these questions are clearly recognized as questions of moral psychology. We

---

a being who lives there with wife and children, and who assigns them their gardens (Seligmann, p. 655).

The *Tube Tube*, after burial, go to a hill on another island, where they live like men (p. 657).

These two sets of instances, taken as they are at random from authorities selected for other reasons, fall in with the view that, apart from civilized influence, the theory of retribution is the rarer among simple peoples, which is also vague and very partial.

[1] Payne, vol. ii. p. 406. In Yucatan also there was a distinction between the Happy Land, where the good men and virgins went, and the evil lot which befell the wicked after death (Waitz, vol. iv. p. 311).

have now to see how they are treated in the lower strata of ethical thought.

In the early stages of moral development men have, broadly speaking, two methods of dealing with their sins, one affiliating itself to the magical, the other to the religious conception of wrong-doing, while as before the two are not infrequently blended into one. Under the magical conception sins, if we may so call them, are, like other evils, things that can by appropriate methods be purged out of a man or a place or a community. They may be transferred to a scapegoat, taken from those who have committed them, put into the animal or man who is to bear them, and driven away into the wilderness or destroyed. They may be got rid of by a solemn formula in which the wrong-doer repudiates them, swears them off, while magical ceremonies are at the same time performed to complete their destruction. On the other hand, where the wrong-doer is held to offend some spirit, the curative process would naturally consist in either quelling, subduing, driving away that spirit, or in appeasing and reconciling it. The former process will closely connect itself with magical arts, the latter leads on to the sacrifices which form the central feature of the cult of the gods.

The expulsion of evils by transferring them to a man or an animal is frequently performed on behalf of the whole community; it is familiar to us from the scapegoat to whom the sins of the Children of Israel were transferred on the Day of Atonement. Laden with these sins, the beast was driven away into the wilderness and the people were free. Among the aborigines of China the ills and disasters of the people during the past year are represented by stones and bits of iron which are placed in a jar and blown up.[1] It is not necessarily sin or wrong-doing that is thus destroyed. Some Chinese tribes protect themselves from pestilences by selecting a man to attract all the evil influences into him by certain rites, after which he is driven away from the village.[2] Ghosts may be driven off like other evil influences.[3] Thus the homicide, even the successful warrior, must be washed to rid himself of the ghost of the slain, and the same process may be applied to the weapons used to commit the deed. The purification by which the ghost or evil influence is expelled lends itself in our minds to an ethical interpretation, but we see from the fact of its application to actions which the savage regards as not only innocent but laudable, that it is rather the supposed physical influence, whether ghostly or magical, that is dreaded and that the purifying rites have to remove.[1] The slayer of his own kindred who has committed a moral offence will also undoubtedly have to undergo purification. But in this respect he is merely on the level with the lauded slayer of an enemy. Both alike may be haunted; that the one is haunted for an act held immoral is an accident; he is not haunted because the act is immoral, nor is the act immoral because he is haunted. He is haunted because he has angered a spirit, a thing which another man may do in the course of his duty to his friends or his community.[2] All that we can say at this stage is that immoral actions are among those which incur the wrath of spirits or the breaking of a taboo, but so little is the moral conception differentiated from the general vague mass of doubt and fear with which primitive man views the effect of his conduct upon the influences that surround him, that the righteous and the unrighteous, the good and the bad, in so far as they bring those influences into play are all lumped together under the one designation of that which is tabooed or set apart from ordinary use and from contact with humanity. To us the holy and the unclean stand at opposite poles of thought, but in the primitive world they are not yet distinct. The Polynesian "taboo," the Latin "sacer," the Greek "hagios," are simply the things set apart for the gods or the spirits, or separated from the use of man, because filled with dangerous influences. If we translate "sacer" by our word "sacred," we must say the parricide is sacred. Of course, he was not sacred, but he was set apart for the vengeance of the family god. Similarly the city of the idolaters devoted to destruction by the Hebrew invaders is not sacred in our sense, nor were their possessions too holy to touch as we conceive holiness. Rather were they unclean and accursed. They were like the holy things only in this, that they were set apart for Jehovah to do what he would with them.[1]

---

[1] Frazer, 2nd ed., vol. iii. p. 106.

[2] *ib.*, p. 104.

[3] *ib.*, vol. i. p. 334 ff., quotes the practice of the Basutos, etc., and refers to the driving away of the ghost by the Arunta alluded to above, and to the taboos placed in various parts of the world upon those who have slain a man.

---

[1] After visiting a grave among the Ainu, Mr. Batchelor was beaten and brushed down with magic wands to drive away evil influences and diseases (*op. cit.*, p. 221). Similar ideas underlie primitive mourning generally.

[2] Compare Frazer, vol. i. p. 340 ff. Any alarming incident that causes danger may require purification to avert it. Thus in North Aracan, on the occasion of a death by accident, or through an animal, or in childbirth, the whole village is tabooed, while the homicide, or man wounded by a wild beast, must abstain from flesh for several months (St. John, *J. A. I.*, 2 seq.). Among the Ngurla, people who have been absent when a relative dies must not speak on their return to camp till they have stood the spear-throwing ordeal (Curr, *Australian Race*, i. 289). Howitt (p. 452) reports a similar practice among the Wiimbaio. For dangers attaching to homicide, incest, etc., see above, Part i. chap. iii. pp. 88–91.

The purification of the community from all ills, physical and moral, is often an annual affair, and since it is necessary that all transgressions which involve the possibility of calamity must be known in order to be got rid of, it is sometimes preceded by an annual confession of sins.[2] The Creek Indians, for example, held a ceremony called the "Busk" every summer, in the course of which "all the men who were not known to have violated the law of the first-fruit offerings and that of marriage during the year" were summoned to hold a solemn fast. All impure people were kept apart, also fasting, and after other ceremonies a new fire was kindled which was held to atone for all great crimes except murder.[3]

8. But the simplest method for ridding oneself of sins is merely to deny or repudiate them in the proper form which the tradition of the priest assures the sufferer to be efficient in ridding him of the load of guilt. This method of purification was highly developed in Babylonia, and also plays an important part in the Egyptian conceptions of the future judgment. In Babylon there seems to have been no question of reward or punishment in a future life, but there was a very strong conviction that a god or demon might be given an opening for attack upon a man by any of his sins of commission or omission. Hence the so-called penitential psalms of the Babylonians and the incantation texts which throw so strong a light upon their ethical ideas. It has been rightly pointed out that the penitential psalms have many of the characteristics of magical formulæ. "The lapse" in them "from the ethical strain to the incantation refrain is as sudden as it is common." There is no

---

[1] Compare Frazer, vol. i. p. 343, etc.

[2] The tribes of Guatemala are said to have made confession of sins (Waitz, vol. iv. p. 265) in time of calamity. In Yucatan there was a private confession followed by a kind of baptism, the purpose of which was to remove evil spirits (*ib.*, pp. 306, 307). The Iroquois practised a public confession at their religious festivals, but Morgan considers that they had perhaps learnt this from the Jesuits (*The League of the Iroquois*, p. 170). The conception was further developed in Mexico, where confession was demanded once in a lifetime, and penances were imposed including blood-letting and fasting, the sacrifice of a slave, and benevolence to the sick and needy; from our point of view a curious confusion of barbarous and moral methods of winning divine favour. These penances might avert punishment (Waitz, vol. iv. p. 129).

[3] Frazer, vol. ii. p. 330, etc. Among the *Central Eskimo*, the Angakoq visits a sick man and requires confession, *e. g.* if he has worked or eaten when forbidden, and if so atonement is required, as exchange of wives or the adoption of a child (Boas, *R. B. E.*, vi. 592).

question in them of retribution proper nor of genuine contrition. The psalm is an enumeration of possible causes of suffering. The mere mention of the right cause goes a long way to relieve it, especially if the priest calls upon the right spirit. Hence the length of the list of sins, which is due to the desire to make it exhaustive. "Speaking the right words, and pronouncing the right name constituted, together with the correct ceremony and the bringing of the right sacrifice, the conditions upon which depends the success of the priest in the incantation ritual."[1] Here is an illustration—

"O that the wrath of my lord's heart return to its former condition,
O that the god who is unknown be pacified,
O that the goddess unknown be pacified.
O that the god known or unknown be pacified,
O that the goddess known or unknown be pacified. . . .
The sin I have committed, I know not. . . .
The sin I have committed, change to mercy,
The wrong I have done, may the wind carry off,
Tear asunder my many transgressions as a garment,
My god, my sins are seven times seven, forgive me my sins."[2]

It is in keeping with the same line of thought that the incantation texts appear as a list of all possible sins, by which the patient who is suffering from misfortune, from fever or from the headache demon, who seems to have been particularly active in the Babylonian swamps, might have been placed under the ban. The reciter of the incantation calls on the great gods, "lords of redemption, on behalf of so-and-so, who is sick, wretched, or in trouble, has offended his gods, spoken evil, despised father or mother," and so forth,[3] and he demands on the chair, by the bellows, by the writing-table, by the halidom of his lord and lady, that the ban be taken off. He calls on the gods of the master of the house, the god of the sinner, or the great gods "as many as are present," the "pan of coals—thou child of Ea," to come and extinguish the sins, transgressions and bonds of so-and-so, and banish his curse. The oddly placed invocation to the coal-scuttle is a reference to the ritual where the sin or curse was burnt up.[4] In another process the table of sins is thrown into the water.[5]

---

[1] Jastrow, *Religion of Babylonia and Assyria*, p. 292. [2] *ib.*, 320.

[3] For the list of offences, see below.

[4] From the Incantation Table Surpu (burning) (Zimmern, *Beiträge*, pp. 3–9).

[5] *ib.*, Table IV. p. 23.

These incantation tablets of the Babylonians help us to understand the famous 125th chapter of the Egyptian *Book of the Dead*, by far the oldest representation of a Day of Judgment. If we look at this account carefully we shall see that here again it is not really a confession of sins, nor a plea for forgiveness, nor even in reality a self-justification that is in question. The dead man enumerates all possible sins that occur to the Egyptian mind as likely to anger the gods, and he rejects them in the appropriate language. Whether he was really and truly guilty of them seems to have been a secondary matter. The point is that he rids himself of them by repudiating them in the proper formulæ. In fact, the introduction to the confession explains that this "shall be said" when the deceased "cometh forth into the hall of Double Maati, so that he may be separated from every sin which he hath done." The first thing that the deceased says to Osiris is, "I know thee, and I know thy name, and I know the names of the two-and-forty gods . . . who live as wardens of sinners and who feed upon their blood." Knowing the names of these cannibal spirits he has magic power over them, and he addresses each one in turn, repudiating the sins which put him in the power of each spirit. "Hail thou, whose strides are long, who comest forth from Annu, I have not done iniquity. Hail thou, who art embraced by flames, who comest forth from Kherāha, I have not robbed with violence,"[1] and so on through a list of forty-two gods and forty-two sins. The confession concluded, he again protests that he knows the names of the gods, he has "heard that mighty word which the spiritual bodies (*v. l.* the Ass) spake unto the cat," he has purified his breast, his hinder parts and his inner parts, and he opens the doors by telling their names.[2] At every turn magical lore holds the master-key, and the repudiation of sins is itself a magical formula for destroying them.[1]

---

[1] For the full list of sins, see below.

[2] Budge, *Book of the Dead*, vol. ii. pp. 355–377. In Egypt we can partially trace the development by which the future life and the rule of the gods in general became associated with morality. The oldest tombs contain provision for the continuance of life, and this principle maintains itself against the doctrine of retribution to the end. With it as equally non-moral we may rank the mass of magical prescriptions which make up the bulk of the *Book of the Dead*. Now, in the Pyramid texts which are our main sources for the ideas of the Old Kingdom, rites and formulæ predominate and ethical considerations "play a very unimportant part" (Gardiner, *Enc. of Ethics*, art. "Ethics and Morality—Egyptian," p. 476). Indeed, the kings boast of violence and adultery (Breasted, *op. cit.*, p. 177). On the other hand, as Mr. Gardiner points out, the morality of kings is not always exactly that of lower people and the funeral stelæ of the officials always record their good deeds. "I gave bread to all the hungry . . . I clothed him who was naked . . . I never oppressed any one in possession of his property" (27th century B.C.); and again: "Never did I say aught evil to a powerful one against anybody. I desired that it might be well with me

Where the religious element predominates wrong-doing is held to be an offence against a spirit. We have seen that it is still possible that the means of expiation should closely resemble those of magic. The spirit may be merely driven away, or frightened off, or got rid of by deception. But the commoner case, particularly as the spirit develops into a god, is to appease him by sacrifice. Just as the sacrifice may be offered to secure a boon, so it may be used to avert wrath, and as primitive sacrifice is held by many modern authorities to be primarily a means of communication between the worshipper and the deity, the piacular form would tend to grow as magical beliefs gave way to the divine governance of the world, and calamities were held to be the direct expression of divine wrath. At this point the value of the sacrifice became the essential feature, and men gave to the gods what they held most dear to themselves; hence costly hecatombs and human sacrifice.[2] The eminently un-

---

in the Great God's presence" (Breasted, pp. 168, 170, etc.). The foundation of these addresses was the desire to obtain mortuary offerings. But during the period of the Pyramid builders the notion of a judgment arising apparently from the myth of the trial of Osiris was beginning to make itself felt, and Mr. Breasted shows that a reference to the "justification" of a mortal was introduced in the later part of that period (p. 177). Between this time and the Middle Kingdom, or about 2000 B.C., the connection of Osiris with the dead was progressively strengthened and from this time every dead person is spoken of as "justified" (p. 256). Finally, we have the full judgment scenes (in which, however, the magical element is strongly maintained), dating in our earliest copies from the 18th Dynasty, though, of course, much older in its composition.

[1] This interpretation of the Negative Confession is supported by the authority of Mr. Griffith (*Stories of the High Priests of Memphis*, p. 46). It was impossible, as Mr. Griffith points out, for a man to be innocent of all the sins, so exhaustively enumerated, but "by denial of sin in correct terms, and by magic adjuration of the heart not to betray him in the scales, the deceased outwitted the gods," and so the worst culprit could escape punishment. Thus, on the one hand, the idea of punishment developed until it seemed that no salvation was possible for any one; on the other, "purely mechanical means were provided, which, as it would seem, the greatest sinner could embrace with full assurance of bliss."

In a description of the Last Judgment found in the *Tale of Khammas*, dating from the first century after Christ, the evil deeds of a man are weighed against his good deeds. Here the magical element has receded in favour of the moral.

[2] See Robertson Smith, *Religion of the Semites*, p. 394, etc. Of course, this is not the sole origin of human sacrifice, which is common enough from barbaric times in association with the cult of the dead, but in earlier civilizations it had a special tendency to crop out anew in connection with national calamities; *e. g.* among the Jews and occasionally at Rome. "A most unroman practice," says Livy. Human sacrifice occurred in Greece "sporadically" throughout the historic period, but the balance of the

spiritual conception of atoning for sin by these means is one of the points seized upon by the advance guard of spiritual religion. The Jahveh of the Prophets desired mercy and not sacrifice, and the cultivated Roman saw the folly and the moral levity of the belief that the guilt of blood could be washed away by water.[1]

Upon the whole, then, in the earlier stages of moral development the mode of dealing with guilt consists either in putting it away or repudiating it by a magical process, or in appeasing or conciliating the gods whom it has offended. Neither of these methods can be regarded as ethical in themselves. They may incidentally involve elements of retributive justice, as where a penance is imposed as part of the means of purification, or a costly sacrifice is enjoined as necessary to buy off punishment. They may also, where confession is exacted, have recuperative moral effect. It is permissible to think that these ethical elements have not been without their influence in determining the form which expiation takes, and particularly in a religion like that of Mexico, where civilized elements rub shoulders with the most unspeakable barbarities, we seem to find the moral element coming into prominence. But speaking generally and looking at the principle of the thing, we find the ethical element but little developed on this side. The removal of sin belongs either to the region of magical mechanism or of spiritual commerce.

9. In the variety of customs and beliefs at which we have glanced we seem to recognize two fairly distinct stages of ethical development. In the lower, the force behind custom—apart, of course, from the physical restraints imposed by society itself—is

---

evidence is strong against the belief that it was a real feature of the Attic Thargelia in the Periclean age. Though occasionally suggested it was clearly repugnant to the general feeling in the fifth and fourth centuries (Farnell, iv. 208 and 275 seq.).

[1] Professor Tylor (vol. ii. p. 439) quotes Ovid—

"Ah, nimium faciles qui tristia crimina cædis
Fluminea tolli posse putetis aqua."

In somewhat similar strain Horace—

"Immunis aram si tetigit manus
Non sumptuosa blandior hostia
Mollivit aversos Penates
Farre pio et saliente mica."

Still more remarkable the epigrams ascribed to Delphi: "Lustration is an easy matter for the good, but an evil man the whole of ocean cannot cleanse with its streams" (Farnell, p. 212, and cf. the doctrine of the widow's mite, *ib.*, 210).

the fear of magical influences or of revengeful spirits. Neither of these is of essentially ethical character. The vengeance of a ghost is very different from the judgment of a god. It does not consider the rights and wrongs of the case, but acts, like the vengeance of the savage himself, on the principle of retaliation. The magical taboo may be held to embody what we call moral feelings, but it implies no clear recognition of the distinctive nature of morality. It does not necessarily apply to all wrong actions,[1] while it does apply to many acts that are innocent or are even deemed laudable,[2] as well as to numerous acts of no moral significance, and in all cases its action as conceived by the savage is what we should call mechanical rather than ethical. Thus the conceptions which serve as a basis for ethical conduct are themselves devoid of ethical character, and the means taken for averting the consequences of guilt, as purifications, incantations, and the appeasement of offended spirits, are of the same nature. A step in advance is taken when spiritual agencies arise who take interest in certain moral acts as such, protecting the helpless and suppliant because they are helpless or suppliant, and punishing the murderer because he is a murderer. In this way certain departments of action are marked out in which a distinctly religious sanction is found for certain rules of conduct, and this idea is generalized in proportion as the avenging deities become the ministers or possibly the attributes of some, or, it may be, of one of the greater gods, who thus comes to be an upholder of the moral order as a whole. Such a god will be a judge of men who rewards or punishes in accordance with an impartial law. As a judge he differs materially from a vengeful spirit. Unfortunately, the conception of judgment is too often associated with means of appeasing the divine wrath in which very primitive and non-moral conceptions are wont to survive. If the belief in a future Judgment represents the ethical conception of retribution, means of securing a favourable judgment will very probably be supplied by a special application of primitive magic. Bearing these limitations in mind, we may, nevertheless, recognize at this second stage a distinctly ethical element in the divinely appointed sanctions on which the social order rests. Morality is based on a partially moralized religion.

---

[1] *e.g.* Theft and adultery. Theft may, indeed, violate a taboo, but this is a penalty imposed by the self-interest of the owner.

[2] *e.g.* Involuntary homicide or the lawful slaying of an enemy. Here the distinction comes to a head. While the moral consciousness would allow contact with the dead to pollute only so far as guilt is marked, the genuine magical or animistic point of view is that the guilt (of homicide) pollutes only so far as dangerous contact with the dead is involved. The failure to differentiate the holy and unclean which has been noted above may be taken as typical of magical and animistic thought.

We may fruitfully compare this advance with the development which we found in studying primitive justice. We there had evidence of a stage at which acts infringing the rights of others beyond a very narrow circle are not, strictly speaking, regarded as inherently wrong, but rather as legitimate occasions for vengeance to be inflicted by the sufferer and his kinsfolk if strong enough to do so. It is not my right to my property which is sacred at this stage, but rather my right to the protection of my kindred. The personal rights and duties which constitute the elements of social order are not yet regarded as valuable in themselves and deserving of the general support of impartial persons. The main categorical imperative is "Stand by thy kin." Doubtless the organization of the blood feud tends on the whole to the maintenance of a certain order, and thus indirectly the elements of social order are protected by this same "imperative." But this does not amount to a direct recognition of the primary rights of person and property. Putting these facts together and taking them in connection with what we now see of the basis of morality, we may infer that moral feeling is not at this stage disengaged on the one hand from the sentiments making for the solidarity of a little group, nor on the other from a prudential dread of human vengeance or of mysterious forces in which there is nothing peculiarly moral. Nor, conversely, do the mass of feelings which surround and sanctify custom directly support those rights and duties in which, to our thinking, the elements of the moral order consist, but rather that mutual aid among kinsfolk by which, as chance directs, the moral order may be supported or may be overridden. Above the stage of the blood feud we saw the rise of public justice and the growing predominance of the view that breaches of the social order are wrongs to be punished rather than personal injuries to be avenged. We saw how society became directly interested in maintaining the elements of social peace, and safeguarding the primary rights of person and property for members of its body, so that as far as the social tie extends the simple social obligations are recognized as binding.[1] We seem to see here the emergence of a more distinctly ethical consciousness which corresponds with, and in fact often finds embodiment in, the higher and clearer conceptions of distinct superhuman personalities who judge impartially between good and evil. In this conception, however crudely and indistinctly worked out, the "ethical basis" is no longer wholly "unethical." Not indeed in the form of a coherent ideal, or a reasoned truth, but as a working rule ordained by a just God the ethical begins to make itself felt as a distinct element of the human consciousness. This emergence constitutes the first step onwards in ethical evolution.

---

[1] In a sense the wider society thus attains the "solidarity" which the primary group reached at a lower stage. But to represent the whole process as a simple widening of group morality by an extension of the social unit would not do justice to the change involved. Within the enlarged family or any group of similar dimensions every relation is personal, and the dependence of each on the protection of the whole is direct and present

The same development may be described from a converse point of view by altering the question, and instead of inquiring into the basis of early morality, asking what is the ethical character of early religion. The reply will be that in the first stage we find that spirits, as such, are not concerned with morality, though some spirits by their position may be affected by certain kinds of conduct which they may resent. In the second stage we find spirits[1] whose essential function is to preside over certain branches of the law, and as development proceeds they become servants of gods, who supervise morals generally. Yet even at this stage, gods are not always, or necessarily, perfect beings; if there are some who represent physical and moral ideals, there are others who exhibit not only the evil passions of contemporary men, but sometimes also the darkest practices of primitive humanity which their own worshippers have outgrown. Some gods are good, but goodness is not yet the essential attribute of God.

---

to the mind. When several such groups form one society, the first result is the practice of collective self-redress. When this is overcome it is by the institution of an impersonal justice, that is precisely one which disregards personal ties, and the wider society so established has a unity which differs from group solidarity because it ceases to be directly and obviously true that its members stand and fall together. Within it great divergences of interest appear, both between individuals and groups, and the unity which imposes restraints upon these interests is one that has to overcome the solidarity of the group. It is not till the impersonal justice which is the basis of this order has been established that we can say with certainty that the ethical judgment has achieved distinctness from the impulses and feelings which brought it to birth, and begun the work of framing an order in which feeling is to be subordinate. Of course, as long as any of the unreal distinctions of group morality remain this order is not complete, but it is not till impartial justice passes the limits of the primary group that it can be said with certainty to have begun.

[1] In themselves these spirits, whether idealized ghosts or personified functions like Fides, are rather a special development of animism than members of the circle of the gods. But though not at first identical with the gods, they are a collateral product of growing religious thought, and in fact tend, as we have seen, to fuse with them.

10. In these early stages the ethical consciousness is still struggling for distinct recognition. It is far as yet from the position in which it can dominate the customary code or infuse its own ideal into the mass of social tradition. The morals of early society are therefore still governed by the conditions under which social life has arisen—that is to say, in particular by the principles of group-morality, in which the elements of hatred and revenge, of self-assertion and domination—in a word, of all the qualities that make for success in strife, are at least as prominent as the principles of love, sympathy, forgiveness, harmonious co-operation, which make directly for the peaceable life of an ordered society. Early society, we might say, is founded on the two complementary principles of attraction and repulsion, and both are represented in its codes. True, early societies differ greatly in character, and we have noted instances in which, whether owing to fortunate surroundings or to a happy strain of moral inheritance, a simple, primitive life is lived in almost idyllic peace and harmony. But these are rare, and such a character is hardly at this stage to be found among the peoples which make the deepest mark upon the world. The condition of a low general culture favours rather the tribes which allow a large sphere of operation to the military instincts. Especially in the races which are starting on a great career of influence in the civilized world the blend of militant and domestic virtues is conspicuous, and the type that results, familiar to us from the annals of early Greece and Rome, from Hebrew history, and the accounts of primitive German life, is in many respects admirable. The closely knit patriarchal family, the loyalty to the chief, the mutual help of the kinsfolk, the respect for woman qualifying the inferiority of her legal status, the sanctity of the oath, the open-handed hospitality, the regard for the suppliant and the stranger—these are among the virtues of primitive society to which its descendants sometimes look back with regret for their relative decline under the softening influences of culture. The other side of the account is the comparative moral isolation of each society, the ferocity often shown to enemies, the disregard of human rights where not protected by equal membership of the social group, the permission of piracy and slave-dealing, the frequent appearance of barbarous religious rites.

11. In the early Oriental civilizations there is a certain blunting of the edges of the barbarian ideals. Though war and conquest, slave-dealing and the imposition of tribute, play a large part in national life and political history, private ethics are more con-

cerned with quiet industrial life and the arts of peace. Political freedom is gone: the personal power of the chief or the great warrior counts for less; the family pride of powerful groups of kinsfolk is lowered. The ethical codes reflect a softening of manners along with a certain loss of the elements of chivalrous idealism which mark the best of the barbarian world, and which are not yet replaced by the idealism of religion or of humanity. It happens that both from ancient Babylonia and Egypt we have remarkably full statements of what were doubtless recognized as the principal moral obligations in the documents already mentioned—the Babylonian Incantation tablets and the Egyptian *Book of the Dead*.

In the second of the Shurpu Incantation Tablets,[1] already referred to, the exorcist asks on behalf of his victim—

> "Has he offended his god . . . offended his goddess?
> Has he uttered calamitous things?
> Has he said evil things?
> Has he said impure things?
> Has he allowed unjust things to be said?
> Has he made a judge take a bribe?
> Has he oppressed weakness?
> Has he divided father and son?
> Has he divided son and father?
> Has he divided mother and daughter?
> Has he divided daughter and mother?"

And so for several pairs of relations.

> "Has he not set the captive free? . . . loosed the bonds of the fettered?
> Denied a prisoner the light of day?
> Said of a captive 'Seize him' . . . of one who is bound, 'Bind him'?
> Is there any sin against a god . . . any trespass against a goddess?
> Any violence towards his forbears . . . any hatred towards his elder brother?
> Has he scorned father and mother . . . affronted his elder sister?
> Has he given in small things . . . denied in great things?
> Has he said 'yes' for 'no'?

---

[1] Zimmern (Delitzsch u. Haupt, Bibliothek.), *Beiträge zur Kenntniss der Babylonischen Religion*, 1901, p. 3, Tables II., III., VIII. Owing to their magical character, as explained above, the tablets are full of repetitions, sometimes with slight differences of phraseology, but the list given in the text covers, I believe, all the distinct causes of offence enumerated. I have let a few repetitions stand by way of illustration.

'No' for 'yes'?
Has he used false weights?
Has he taken bad money . . . not taken good money?
Disinherited a legitimate son . . . put in an illegitimate son?
Made false boundaries . . . not allowed true boundaries?
Displaced boundary, landmark, limit?
Has he set foot in his neighbour's house?
Approached his neighbour's wife,
Shed his neighbour's blood,
Stolen his neighbour's dress?
Has he not let a man go out of his power?
Driven a respectable man out of his family,
Divided a united kindred,
Raised himself against his superior?
Was he sincere with his lips . . . false in his heart,
Saying 'yes' with his lips . . . 'no' with his heart?
Is it for all unrighteousness that he meditated,
To persecute the righteous, to repudiate,
To annihilate, to drive away, to destroy,
To raise up—to stir up violence,
To outrage, to rob, to procure robbery,
To engage in evil?
Is his mouth loose and obscene,
(Are) his lips deceitful and refractory?
Has he committed an impurity . . . taught indecent things?
Has he engaged in magic and witchcraft?
Has he made a promise with heart and lips, but not kept it,
Through a present dishonoured the name of his god,
Consecrated and vowed something, but kept it back,
Presented something . . . but eaten it?
Has he angered his god and goddess against him?"
"Whether he has pointed to a figure with his finger?
Whether through the figure of his father or mother . . . he is cursed,
Through the figure of his elder brother or elder sister . . . he is cursed, etc."
"Whether he has wrought wickedness to his town,
Spread a report about his town,
Maligned the fair name of his town?
Whether he has approached an accursed one,
Whether an accursed one has approached him,
Whether he has slept in an accursed one's bed,
Sat on the accursed one's chair . . .
He demands, he demands"—

The list may be completed from the remaining tables. Thus Table III. mentions—

"A curse through pointing with the finger at fire,
Through taking fire and swearing by god,
Through demanding due instead of giving it,
Through sitting facing the sun,
Through tearing up plants from the field,
Through bow, brazen dagger, or spear,
Through slaying young game,
Through stealing up to a companion and slaying him,
Through being besought for a day about a gutter and refusing,
Through being besought for a day about a cistern and refusing,
Through taking a bucket and swearing by god,
Through asking any one about hunting, in the stable,
Through swearing by god with unwashed hands upheld,
Through stopping a neighbour's canal,
Instead of being compliant to an opponent, remaining inimical to him,
Through producing a weapon in an assembly,
Through interceding for a sinner."

Further, in Table IV. we find a curse through

"Abandoning instead of protecting manservant, maidservant, master or mistress,
Abandoning instead of protecting woman, wife or son."

The list of possible offences would doubtless tend to grow as fresh possibilities of offences occurred, while people were afraid of leaving out anything for fear of losing the magical effect. As to the contents of the code, it will be seen that the simple ethical duties, respect for life, property, and sex, all figure; that great stress is laid upon the family tie and upon disturbances of the peace among relations and friends, that violence is deprecated, and that at least in one place, if not forgiveness of enemies, at any rate reconciliation with enemies seems to be recommended. Finally, the duties to prisoners and captives, the obligation to protect the slave and the dependent are freely recognized. In mentioning these points, however, we have indicated the highest limit which the code touches.

With the Babylonian tablets we may compare the well-known chap. cxxv. of the *Book of the Dead*.[1] There are two Confessions. The first runs as follows—

---

[1] Translations of this chapter vary greatly. In the text I have followed that of Mr. Ll. Griffith, *World's Literature*, p. 5320. The variants in brackets are from Mr. Gardiner's article in the *Enc. Religion and Ethics*. The concluding address to the gods is from Dr. Budge's translation in the *Book of the Dead*. In view of the variations of reading the details cannot be pressed. Yet in spite of the unethical treatment it is difficult to suppose that any offences considered deadly would be omitted.

"I have not done injury to men.
I have not oppressed those beneath me (brought misery upon my fellows).
I have not acted perversely [prevaricated ?] instead of straightforwardly (wrought injuries in the place of right).
I have not known vanity (known what is not).
I have not been a doer of mischief.
(I have not made the beginning of every day laborious in the sight of him who worked for me.)
(My name has not approached the ship of him who is first.)
(I have not slighted (?) God.)
(I have not impoverished the poor.)
I have not done what the gods abominate.
I have not turned the servant against his master (traduced the slave to him who is set over him).
I have not caused hunger.
I have not caused weeping.
I have not murdered.
I have not commanded murder.
I have not caused suffering to men (made every one suffer).
I have not cut short the rations of the temple.
I have not diminished the offerings of the gods.
I have not taken the provisions of the blessed dead.
I have not committed fornication, nor impurity in what was sacred to the god of my city. (In the service of the god of my city.)
I have not added to, nor diminished the measures of grain.
I have not diminished the palm measure.
I have not falsified the cubit of land (added to nor filched away).
I have not added to the weights of the balance.
I have not nullified the plummet of the scales.
I have not taken milk from the mouth of babes.
I have not driven cattle from their herbage.
I have not trapped birds, the bones of the gods.
I have not caught fish in their pools (?).
I have not stopped water in its season.
I have not dammed running water.
I have not quenched fire when burning. (In its [appointed] time.)
I have not disturbed the cycle of gods, when at their choice meats (neglected the feast days in respect of their sacrificial joints).
I have not driven off the cattle of the sacred estate.
I have not stopped a god in his comings forth.
(I am pure. I am pure. I am pure.)"[1]

---

[1] Griffith, *World's Literature*, 5320.

After an adjuration to the gods, the Second Confession follows—

"I have not done injustice (wickedness).
I have not robbed.
I have not coveted (?) (been grasping ?).
I have not stolen.
I have not slain men.
I have not diminished the corn measure.
I have not acted crookedly.
I have not stolen the property of the gods.
I have not spoken falsehood.
I have not taken food away.
I have not been lazy (?) (I have not been resentful ?).
I have not trespassed (been neglectful).
I have not slain a sacred animal.
I have not been niggardly in grain (robbed the loaves).
I have not stolen.
I have not been a pilferer (an eavesdropper).
My mouth hath not run on (have not been a gossip).
I have not been a tale-bearer (made mischief) in business not mine own.
I have not committed adultery with another man's wife.
I have not been impure.
I have not made disturbance.
I have not transgressed (laid schemes).
My mouth has not been hot.
I have not been deaf to the words of truth.
I have not made confusion.
I have not caused weeping.
I am not given to unnatural lust. (I have not . . . the copulator who was copulating.)
I have not borne a grudge (made suppressions).
I have not quarrelled (reviled).
I am not of aggressive hand (have not been violent).
I am not of inconstant mind (hasty).
I have not spoiled the colour of him who washes his god (?) (neglected the nature of the god's satisfaction).
My voice has not been too voluble in my speech.
I have not deceived nor done ill (done harm to the doer of evil).
I have not cursed the king.
I have not waded over the water.
My voice is not loud (haughty).
I have not cursed God.
I have not made bubbles (?) (been puffed up).
I have not made (unjust) preferences (comparisons with myself).

> I have not acted the rich man except in my own things (made a show with possessions not my own).
> I have not offended the god of my city (thought scorn of)." [1]

Then follows a further adjuration.[2]

"Homage to you, O ye gods who dwell in your Hall of double Maati, I, even I, know you, and I know your names . . . I have not cursed God, and let not evil hap come upon me through the king who dwelleth in my day [3]. . . I have performed the commandments of men (as well as) the things whereat are gratified the gods . . . I have given bread to the hungry man, and water to the thirsty man, and apparel to the naked man, and a boat to the (shipwrecked) mariner. I have made holy offerings to the gods, and sepulchral meals to the *khus*. Be ye then my deliverers."

Not only are homicide, violence, many forms of dishonesty and sexual impurity[4] here repudiated, but, what is perhaps most remarkable, there appears a strong implied condemnation of any conduct causing suffering to others,[5] a recognition of duty to dependents, and a claim to the merit of positive beneficence. There is also a noteworthy repudiation of undue self-seeking, and in one place something like an insistence on forgiveness.

The skeleton of this Negative Confession is filled in for us by such moralistic writings as the Precepts of Ptah-Hotep, the Instructions for King Mery-ke-re, and the tale of the Eloquent Peasant, etc., dating from the Middle Kingdom, and the Maxims of Ani belonging to the new Kingdom. Full of platitudes as these seem to the modern reader wherever their meaning is not obscure, they appear to have had a long popularity in ancient Egypt, and they are of historic interest as perhaps the earliest examples of secular ethics, the morals of worldly wisdom with little or no reference to religious sanctions; indeed, occasionally with a certain suggestion in them that this life is all we have and we had best make the most of it. The tendency of both Ptah-Hotep and Ani is to recommend a certain mildness and moderation of temper, restraint in language and in social intercourse, prudence and energy in the conduct of one's own affairs, a strenuous minding of one's own business and avoidance of gossip, a prudent bending to superiors and an equally wise moderation in dealing with those of lower estate, a generally diffused good-nature and reasonableness—all as means whereby man prospers in this world and, perhaps, in the Valley of the Dead as well. "It is the modest (?) that obtain wealth; never did the greedy (?) arrive at their aim," says the optimistic Ptah-Hotep. "Make not terror among men.[1] God punisheth the like . . . Never did violence among men succeed."[2] Again, "Beware of any covetous aim. That is as the painful disease of colic. He who entereth on it is not successful. It embroileth fathers and mothers with the mother's brothers, it separateth wife and husband . . . A man liveth long whose rule is justice."[3] In the same spirit the pupil is to keep from relations with the women in the house which he enters, but be kind to a woman if he has made her ashamed. He should avoid scandal and gossip.[4] He should prefer gentle to violent methods. "Greater is the prayer to a kindly person than force."[5] He should avoid presumption. "Raise not thy heart lest it be cast down."[6] If successful he should avoid niggardliness. If a chief or great officer, he should do justice, and be considerate and attentive to suitors. If an inferior, "Bend thy back to thy chief, thy superior of the king's house, on whose property thy house dependeth . . . it is ill to be at variance with the chief. One liveth only while he is gracious."[7] But to friends, "Let thy face be shining the time that thou hast . . . The remembrance of a man is of his kindliness in the years after the staff (of power ?)."[8] Or as Ani puts it, "Eat not bread while another standeth by . . . The one is rich and the other poor, and bread remaineth to him who is open-handed. He who was prosperous last year even in this may be a vagrant."[9]

---

[1] Griffith, *World's Literature*, 5321.

[2] Budge, *Book of the Dead*, ii. 371.

[3] Or, "I have had no fault towards the king of my time" (Gardiner).

[4] The references to impurity are not free from ambiguity. Professor Flinders Petrie (*Religion and Conscience*, p. 134) regards the repudiation in the First Confession (which he considers to be the oldest) as dealing only with a violation of the sacred precinct, while in the Second Confession he distinguishes three repudiations of adultery (19), of impurity (20), and unnatural lust (27). Max Müller, however (*Liebespoesie*, p. 17), understands the reference to impurity as a repudiation of the use of love philters. On the whole, it seems unlikely that fornication as such is one of the forty-two sins (cf. Gardiner, *Enc. Ethics*, p. 482).

[5] The references to animals are obscure and can hardly be pressed. They seem to have magical or religious rather than a humanitarian purport.

---

[1] This is taken by Mr. Griffith (*World's Literature*, 5332) as referring to the occupations of brigandage and pillage. It is rather a faint condemnation. Others understand it as a counsel against associating with the slave of another.

[2] Ptah-Hotep, sec. 6. Tr. Griffith, *World's Literature*, 5332.

[3] *ib.*, sec. 19.

[4] Flinders Petrie, *Religion and Conscience*, 117 = Ani, sec. 16.

[5] *ib.*, 155 = Ptah-Hotep, sec. 20.

[6] *ib.*, 143 = Ptah-Hotep, sec. 25.

[7] *ib.*, 150, 154 = Ptah-Hotep, 30, 31.

[8] *ib.*, 141, 143 = Ptah-Hotep, 34.

[9] *ib.*, 154 = Ani, 41; Griffith, *World's Literature*, 5341.

By attending to Ani's maxims you will reach an honoured old age, and be ready for death however suddenly it comes.[1]

There is much of kindliness, much of social good-nature, much of prudent moderation, something of self-reliance and dignity, but "there is hardly a single splendid feeling; there is not one burst of magnanimous sacrifice; there is not one heartfelt self-depreciation in any point of all that worldly wisdom."[2]

A somewhat higher note is struck in such literary pieces of the Middle Kingdom as the "Eloquent Peasant." This is in effect a bitter satire on the indifference of official justice and a sustained plea for redress running the whole gamut from laudation of the judge as the implement of eternal justice to the threat of suicide and appeal to the lord of the dead if retribution is withheld.

> "Do justice for the sake of the lord of justice . . . for justice (or righteousness, right, truth[3]) is for eternity. It descends with him that doeth it into the grave . . . His name is not effaced on earth, he is remembered because of good. Such is the exact summation of the divine word."[4]

The peasant has been compared to a Hebrew prophet, and in the passion of his denunciation he is their forerunner. But it is hardly correct to speak of him as a pleader for social justice. It is judicial indifference that he is satirizing, not the subtler and more far-reaching forms of social wrong.[5] He reflects the same feeling for legal uprightness which invented or cherished the tradition of a judge of the Old Kingdom who always gave decisions against any member of his own family for fear of seeming partiality, and the higher view of the Middle Kingdom which rebuked such discrimination: "Now this is more than justice."[6] We see, however, in these writings a more genuine association of religion with ethics than that of the Hall of Osiris, and we find traces of the same advance in the Instructions for King Mery-ke-re which have already been quoted for their incipient monotheism. "How hath he (Re) slain the froward of heart? Even as a man smiteth his son for his brother's sake. For God knows every name." "More acceptable is the nature of one just of heart than the ox of him who doeth iniquity "[1]—a really notable anticipation of "I will have mercy and not sacrifice." So, too, earlier in the document we read: "Do justice that thou mayst endure upon earth. Calm the weeper. Oppress not the widow." But a terrible bathos follows: "Slaughter not, for it does not profit thee," or, perhaps, "unless it profit thee." Such a transition warns us against large conclusions from exceptional traces of idealism. On the whole, as the Egyptian religion was pre-spiritual, so Egyptian morality was that of common-sense moderation. Idealism exists only in a few germs.

---

[1] Flinders Petrie, 129 = Ani, 15.

[2] *ib.*, 162.

[3] Gardiner's rendering is Wahrheit (*Die Klage des Bauern*, p. 14).

[4] Breasted, p. 224; Gardiner, *loc. cit.*

[5] The complaints of Ipnever (Gardiner, *Admonitions of an Egyptian Sage;* Breasted, p. 204, etc.) may refer to a real state of social anarchy but are rather like the grumbling of some one who has had misfortunes against the *nouveaux riches.* The burden of the complaint is that he who was a serf now has serfs, while the well-to-do man is hungry.

[6] Breasted, 242.

The chivalry of barbarism is gone, and the idealisms of religion and of humanity have not yet come. To the rise of such idealism we must now turn.

---

[1] Gardiner, *Journ. Eg. Arch.*, Jan. 1914, p. 34.

CHAPTER III

THE WORLD AND THE SPIRIT

1. The growth of reflection has in many races and under divers conditions of culture carried mankind beyond the stage of Polytheism. The awakening reason demands a theory of the universe and ceases to be satisfied with the patchwork schemes of mythology. The moral self coming to partial consciousness of its nature and scope demands a higher rule of life and a deeper understanding of its relation to cosmic forces. Instead of inventing stories about the beginning of things and the origin of laws, the mind begins to search for the general truths underlying or permeating experience and giving unity and meaning to human purposes. The forward step achieved by thought in this movement may be described by saying that the imagery of its earlier stage is replaced by defined and reasoned conceptions formed by the analysis and reconstruction of primitive ideas. Though first applied with positive success in the special sciences, and particularly in the sciences of number and quantity, the ambition of conceptual thought is always to frame a theory of the universe and an ideal of life and character. And fail as it may in its attempts at final truth, a deeper religion and a higher ethics are the outcome of each new effort.

The lines on which these efforts proceed are very various. We have already seen the beginnings of a tendency to trace the scheme of things to a single principle, or at any rate to a first cause, in the attempts of polytheism to treat the many gods as different incarnations or emanations of one and the same Being. But this tendency does not always lead to monotheism. On the contrary, great religious systems have arisen in which, as in Brahmanism, the movement is rather towards pantheism than to monotheism, and the unity of God is an uncertain conception waveringly held and admitting of compromise with the polytheistic traditions. There are religions like Buddhism, again, in which the whole theological aspect of religion is secondary, and the central conception is that of a necessary law of cosmic life by which human life in particular is determined and to which human beings must adjust themselves. Or finally, as in Taoism, the supreme principle of things may be left undefined as something that we experience in ourselves if we throw ourselves upon it, but which we know rather by following or living in it than by any process of ratiocination. This mystical interpretation is not confined to Taoism, but in one form or another lies near at hand to all spiritual religions, and expresses one mode of the religious consciousness, its aspiration to reach the heart of things and its confidence that it has done so and found rest there.

Widely as these forms of religion differ from monotheism, they may for certain purposes be grouped along with it. All are or are on the way to become spiritual religions, resting on and involving a certain ethical idealism, and that power of handling conceptions which we take to imply a distinct stage onward in the growth of thought. For in the spiritual religions there is an endeavour to render an articulate account of the universe, of the world process as a whole, of man's place therein and the duties which it imposes on him. But this attempt cannot even be entered upon seriously until certain fundamental conceptions are formed with tolerable distinctness. The contrasts of the permanent and the changing, of substance and attributes, of cause and accident, of reality and appearance, of the eternal and the transitory, of the universal and the individual, of divine and human personality—such antitheses present themselves with greater or less articulateness in all attempts to think out the problem of the universe. What is common to all products of this stage of thought, and what differentiates them from the work of lower stages, is that in these the fundamental conceptions involved in any attempt to render the whole scheme of things in systematic fashion have definitely been brought into consciousness. The religions of this stage are all conceptual religions rising above mere imagery, and handling, as distinct objects of thought, categories which at a lower stage are still wrapped up in the experiences in which they are given to the senses.[1]

---

[1] The emergence of these fundamental conceptions into clear consciousness is to be regarded as the result of a long process of development. In chap. i. we traced the growth of the mind to the point at which concrete images or picture ideas could be distinctly formed and held apart. But such ideas are not yet fitted for systematic thinking. They have to be further broken up and re-combined, so as, in the first place, to become exact, and applied always with the same meaning (as "universal" instead of "general"). Next, the elements that lie within an idea or go to constitute its character must be distinguishable, so that the differences which constitute a specific development of a general rule, or the blended identities and differences which constitute co-ordinate genera can be

They are also spiritual religions, having at their best certain ethical conceptions in common. We have seen that the characteristic of the lowest religions is that their "spirits" are "unspiritual." They are not even differentiated from matter. They blur and confound the distinction of good and evil, holy and unclean, intelligent purpose and mechanical action. In the stage now reached these confusions are in large measure overcome. The spiritual draws itself together and is presented in antithesis to the sensual and the earthly as the source of all light within man and without. The spiritual is opposed to the sensible world, the spirit in man to his grosser elements, as the underlying spring of what is good and wise and beautiful, and as the bond that connects him with the sources of all that he finds of goodness and wisdom and beauty in the order of things. Finally, with this conception of spirituality a distinct set of ethical conceptions is connected. The individual must enter into relations with the universal spirit, and to do so he must put off his individuality. He must subdue the senses, and not only the senses, but all things that make for his own self-assertion and hinder his perfect communion with the spiritual world. Pride must give place to humility, resentment to forgiveness, the narrow love of kinship to universal benevolence, family life to the selfless impersonal brotherhood of monasticism. For the spirit is not yet of this world. The first step towards realizing it is to conceive it by contrast to common workaday experiences. To understand how it may transform experience, to bring it back to earth without losing its warmth and glow upon the downward journey, is the unfulfilled task of a higher mode of thought.

2. The spiritual religions have their home in the East. Probably the earliest in point of time — though dates are very uncertain — is the imperfectly spiritualized system of the Brahmans. It is impossible, however, even to touch upon Brahmanism without saying one word upon the preceding stages

---

assigned. When this is done the idea is transformed into the concept, and the loose thought-transitions by which images suggest one another are superseded by systematic meditation, reasoning and discussion, whereby concepts are analyzed or combined and consequences logically inferred from premises. Fallacious and genuine methods are distinguished, and thus the old confusion of idea and fact which made the world of make-believe is in principle overcome. On the other hand, in the early stages, the methods of testing the original value of the conceptions employed by a scientific analysis of experience is little understood, and there is accordingly a tendency to construct thought-fabrics which nowhere touch solid earth.

of Hindu thought. The earliest phase of Hindu culture known to us, that of the Vedas, resembles in essentials the culture of the Homeric age, and, generally speaking, it has all the characteristics of a barbaric society, which is destined to develop into something higher. Family life is in the patriarchal stage; the father is master of wife, children and slaves. There is no caste as yet,[1] but there is a strong distinction between the fair-skinned conquering Aryans and the subject dark-skinned Dasyus. The gods of the Vedas are great gods, controlling the forces of nature, who may rank with any of the leading deities of Polytheism. Indra is a man of war like Jahveh or Ashur. He is the special protector of the Arya—"wielding the thunderbolt, and confident in his prowess he strode onwards, shattering the cities of the Dasyus . . . chastising the lawless he subjected the black skin to Manu" (the white Aryan).[2] Neither the power nor the moral attributes of the deity are conceived with more consistency or clearness than in other polytheistic schemes. Indra is said to have created or lighted up Ushas. But in other hymns he crushes her chariot with his thunderbolt, and this smiting of "a woman who was bent on evil"—elsewhere the recipient of prayer—is extolled as a "deed of might and manliness."[3] Even in the Mahabharata and the Puranas, "Indra, Varuna and other gods" are represented "as leading a sensual and immoral life," and "the Apsarases or celestial nymphs are expressly declared to be courtesans . . . and are represented as being sent by the gods from time to time to seduce austere sages into unchastity."[4] S'rī is described as issuing forth from Prajāpati. "Beholding her thus standing resplendent and trembling, the gods were covetous of her and proposed to Prajāpati that they should be allowed to kill her and appropriate her gifts"—a genuine magical conception of the transference of powers. "He replied that she was a female and that males did not generally kill females. They should, therefore, take from her her gifts without depriving her of life."[5] The chivalry of the gods did not go beyond respect for life, it appears. The gods, it is true, release from sin, but sin appears to be conceived as a quasi-magical bond, and the sin of the father is regularly visited on the children.[6] Virtues, however, recommend men to the gods, and especially liberality conduces to prosperity. "He is the bountiful man who gives to the lean beggar who comes to him craving food. Success attends that man in the sacrifice and he secures for himself a friend in the future."[1] The conception of the divine power fluctuates no less than in other polytheistic religions. On the one side, it tends towards monotheism in the form of attributing supreme position to whichever deity is the immediate object of worship—Indra, Varuna, or another. At times with less of *naïveté* and more of deliberate pantheistic feeling, we find it laid down that one god is or includes all the rest. "Aditi is the sky, Aditi is the air, Aditi is the mother and father and son, Aditi is all the gods and the five classes of men. Aditi is whatever has been born, Aditi is whatever shall be born."[2] We even get a distinct attempt at a true speculative account of the beginning of things.

---

[1] See above, Part i. chap. vii.

[2] Muir, *Sanskrit Texts*, vol. v. p. 113.

[3] *ib.*, vol. v. p. 192.

[4] *ib.*, pp. 323, 324; cf. also p. 115.

[5] *ib.*, p. 349.

[6] See Max Müller, *Rig Veda*, i. 244, 245, etc.: "Absolve us from the sins of our fathers and from those which we have committed with our own bodies. Release Vasishtha, O king, like a thief who has feasted on stolen cattle; release him like a calf from the rope." Cf. also *Rig Veda*,

"There was then neither nonentity nor entity; there was no atmosphere, nor sky above. What enveloped (all)? Where, in the receptacle of what (was it contained)? Was it water, the profound abyss? Death was not then, nor immortality; there was no distinction of day or night. That One breathed calmly, self-supported; there was nothing different from, or above, it. In the beginning, darkness existed, enveloped in darkness. All this was undistinguishable water. . . . From what this creation arose, and whether (any one) made it or not,—he who in the

---

vii. 86, quoted in Muir, p. 66, where the poet naïvely explains, "It was not our will, Varuna, but some seduction which led us astray—wine, anger, dice, or thoughtlessness. The stronger perverts the weaker. Even sleep occasions sin."

[1] *Rig Veda*, x. 117, quoted in Muir, pp. 431, 432. The notion of future reward appears in the Veda alongside of a more primitive view. He who cooks the vishtarin oblation "goes to the gods, and lives in blessedness with the Gandharvas, the quaffers of soma. Yama does not steal away the generative power of those who cook the vishtarin oblation" (*ib.*, p. 308). Here the question of oblations is most prominent. Elsewhere we read of heroic deeds, austerities and sage meditations, as contributing to bliss.

"Let him (the deceased) depart to those for whom the honied beverage flows. Let him depart to those who, through rigorous abstraction, are invincible, who, through *tapas*, have gone to heaven; to those who have performed great *tapas*. Let him depart to the combatants in battles, to the heroes who have there sacrificed their lives, or to those who have bestowed thousands of largesses. Let him depart, Yama, to those austere ancient Fathers who have practised and promoted sacred rites" (Muir, *Sanskrit Texts*, vol. v. p. 310).

Lastly, in *Rig Veda*, iv. 5. 5, there is a reference to some sort of punishment. "This deep abyss has been produced (for those who), being sinners false, untrue, go about like women without brothers, like wicked females hostile to their husbands" (Muir, *Sanskrit Texts*, v. 312).

[2] Muir, v. 351, 354.

highest heaven is its ruler, he verily knows, (or even) he does not know. . . . That One which lay void, and wrapped in nothingness, was developed by the power of fervour."[1]

On the other side, the divine power is animistically or magically conceived. The gods are held to be nourished by food, to be produced from other beings, to sacrifice and to be sacrificed. In one hymn Víśvakarman is said to sacrifice himself or to himself, and he offers up heaven and earth. In another, it appears that the gods sacrificed to the supreme god or that they offered him up.[2] Sacrifice is still a magic process from which the gods derive strength. Its materials and implements themselves become deities and so, too, do prayers and hymns, the Vedas themselves, and the priests who control these powers.[3] The Brahmanic sage ranks with the gods.[4]

3. Before tracing the outcome of the Vedic religion in India we must glance at the parallel development in ancient Iran. Springing from the same stock as the Aryan invaders of India and worshipping the same gods, the ancient Persians developed a form of religion which is in one respect unique. The dualism of gods and demons, a frequent incidental feature of polytheism, became the central fact of their creed. Originally, it would seem, one of the great gods of the common ancestors of the Persian and Indian peoples, Ahuramazda gradually assumed a position of predominance over the rest. He is already in the time of Darius the greatest of all gods, "who made this earth, who made that heaven, who made man, who made Darius king."[5] But this supremacy was not unquestioned. The demons did not disappear or become subordinate as in other religions, but maintained a perpetual conflict with Ahuramazda and his host, and obtained for themselves a leader, the evil spirit Angra Mainya, or, to give him the name better known to us, Ahriman. The world of spirits is divided into two hostile hosts, who balance one another. Ahriman is the precise counterpart of Ahura, the Daêvas or

---

[1] *Rig Veda*, x. 129, in Muir, vol. v. pp. 356, 357.

[2] Muir, vol. v. p. 372.

[3] *ib.*, v. 411, 142. It seems out of place to regard the deification of the power of prayer under the name of the Brahmanaspati as imparting a new and more ethical element into religion. Such personifications belong rather to the lower magico-animistic stratum in polytheism (see Muir, v. 272).

[4] Manu, xiii. 49. Cf. ix. 317, and xi. 35, etc.

[5] *Zend Avesta*, i., Introduction, p. 61, by Darmesteter, in *Sacred Books of the East*, vol. iv. On the relation of primitive Mazdaism to Vedism, the precise nature of which is uncertain, see *ib.*, lii.

demons are opposed to the Amesha Spentas,[1] or good spirits, who assist Ahura. Human life is in a sense the arena of the conflict, since it is the forces that are held to work for man's good that are conceived as being ranged under Ahuramazda, and the contrary that fight under the banner of Ahriman. Yet the battle is not essentially a moral conflict between good and evil. It rages throughout physical nature, and is fought in large measure by magical weapons. Animals play a large part in the fight—dogs, otters and hedgehogs on the side of Ahura; snakes, tortoises, frogs and ants on that of the demons. The distinction apparently depended on nothing so rational as the utility of the animals, but rather, we may conjecture, on the nature and rank of the god whom they incarnated in an earlier stage of the creed. To injure one of Ahura's animal supporters was as deadly a crime[2] as to kill one of Ahriman's animals was meritorious. Man also plays his part. His prayers and sacrifices assist the gods in their struggle.[3] Conversely, any deviation from the rules of ceremonial functions brings evil upon the land. In particular, any behaviour which spreads the death infection, *e.g.* carrying a corpse by oneself, which renders a man peculiarly liable to be seized by the death spirit, or polluting the sacred element of fire by burning a corpse, are unpardonable sins.[1] They involve the community in danger, they hamper the gods in their conflict with the demons, and they afflict the offender with a taboo of deadly import.

---

[1] These, however, appear to belong to later developments of the religion and are probably importations, perhaps Platonic in origin (*ib.*, p. lvi and lxi). The original religion had a group of nature gods surrounding Ahura Mazda (p. lxi).

[2] This has nothing to do with humanity towards animals, but is concerned purely with the mischievous effects supposed to ensue. Thus "He who kills a water-dog (otter) brings about a drought that dries up pastures." Sweetness and fatness will not come back to the land till he is smitten to death, and "the holy soul of the dog has been offered up a sacrifice." The murderer receives twice ten thousand stripes, and offers a great number of gifts to priests; among them, "he shall godly and piously give in marriage to a godly man, a virgin maid whom no man has known to redeem his own soul," a sister or daughter of his (*Zend Avesta*, i.; *Sacred Books*, vol. iv. p. 168 ff.).

The penalty of killing a shepherd's dog was, at least nominally, eight hundred stripes. The murder of a "water-dog" was avenged by ten thousand stripes (*ib.*, Introduction, p. 84). Darmesteter thinks that these penalties must have had a money compensation (*ib.*, pp. 85, 86).

[3] The gods also sacrifice to one another. Not only as an act of worship and recognition, as *e.g.* Ahura sacrifices to the ancient gods (Duncker, *Hist. Antiq.*, vol. v. p. 136), but also to one another to add to their strength. Thus Tistrya, worsted by Apaosha, cries to Ahura: Oh, Ahura Mazda! . . . men do not worship me with a sacrifice . . . If men had worshipped me with sacrifice . . . I should have taken to me the strength of ten horses, ten bulls, ten mountains, ten rivers. Ahura offers him a sacrifice; he brings him thereby the strength of ten horses, ten camels, ten bulls, ten mountains, ten rivers; Tistrya runs back to the battle-field and Apaosha flies before him (*Zend Avesta*, ii.; *Sacred Books*, xxiii. 99 ff.).

But Ahuramazda is the lord of the moral as well as the physical world, and there are breaches of morality which incur divine wrath no less than magical impurities. Prominent among these are falsehood and breach of faith. "The ruffian who lies unto Mithra brings death to the whole country."[2] To ride, to shoot with the bow, and to speak the truth were, as Herodotus tells us, the three lessons learnt by every Persian youth. This is borne out by the emphasis laid on truthfulness and the honourable observance of obligations. The principle holds equally, whether the other party to the bargain be believers or unbelievers, fellow-countrymen or foreigners. "Break not the contract, O Spitama, neither the one that thou hast entered into with one of the unfaithful, nor the one that thou hast entered into with one of the faithful. . . . For Mithra stands for both the faithful and the unfaithful."[3]

Scarcely less prominent is the duty of succouring the faithful with alms. Zarathustra's ideal, according to Mr. Mills, was to establish a kingdom under God, "whose first care was to relieve suffering and shelter the honest and industrious poor."[4] However this may be, the duty of almsgiving is prominent. To refuse alms when entreated by the faithful is one of the offences which added to the progeny of the Drug demon.[1] Hospitality is rewarded in the next life, and niggardliness punished. There is a reward for him who wields the power Ahura gave him to relieve the poor.[2] The moral code as a whole may be fairly represented by two passages. The first gives injunctions to the faithful.

---

[1] Some specimens are worth giving. "Two hundred stripes are awarded if one tills land in which a corpse has been buried within the year, if a woman just delivered of child drinks water. . . . Four hundred stripes if one, being in a state of uncleanness, touches water or trees. . . . Five hundred stripes for killing a whelp, six hundred for killing a stray dog, seven hundred for a house dog, eight hundred for a shepherd's dog, one thousand stripes for killing a Vanghâpara dog, ten thousand stripes for killing a water-dog. Capital punishment is expressly pronounced only against the false cleanser and the carrier-alone." Repentance and confession with the recital of an appropriate formula might save the offender in the next world but not in this (*Zend Avesta,* Introd., p. 84).

[2] *ib.*, ii. 120.

[3] *ib., loc. cit.* Lower down the comparative sacredness of different contracts is expressed numerically in the form "Mithra is 20-fold between two friends," etc., *i. e.* (apparently) 20 times more binding than between two persons not connected by any special tie. A list of ten cases is given, the sequence of which is curious enough. "Mithra," it appears, is 50-fold between wife and husband, but 90-fold between two brothers. He is, however, 1000-fold between two nations, and, finally, 10,000-fold when connected with the law of Mazda (*ib.*, vol. ii. pp. 149, 150). According to Mr. L. H. Mills (*ib.*, vol. iii., Introduction, p. xxi), a mere raid for rapine (as opposed to desolation inflicted in regular warfare) was regarded as a terrible thing.

[4] *Op. cit.*, p. xxii. Darmesteter (see vol. iv. p. lxvii) also places the "ethics of labour" among the original features of Mazdaism.

> "So be ye discreet from your obedience, most correctly faithful in your speech, most saintly from your sanctity, best ordered in your exercise of power, least straitened by oppressions, heart-easy with rejoicings, most merciful of givers, most helpful to the poor, fulfilling most the ritual."[3] . . .

The second withholds a blessing and pronounces a curse on the wicked.

> "Let not our waters be for the man of ill-intent, of evil speech, or deeds, or conscience; let them not be for the offender of a friend, nor for an insulter of a Magian, nor for one who harms the workmen, nor for one who hates his kindred. And let not our good waters (which are not only good), but best, and Mazda-made, help on the man who strives to mar our settlements, which are not to be corrupted, nor let him who would mar our bodies, (our) uncorrupted (selves), nor the thief, nor bludgeon-bearing ruffian who would slaughter the disciples, nor a sorcerer, nor a burier of dead bodies, nor the jealous, nor the niggard, nor the godless heretic who slays disciples, nor the evil tyrant among men. Against these may our waters come as torments."[4]

In sexual matters the magical and the ethical appear to be blended. The courtesan is banned as one whose look dries up more than one-third of the mighty floods: "Such creatures ought to be killed more than gliding snakes, than howling wolves."[5] The Sodomite is a Daêva, a worshipper of Daêvas, and in his whole being a Daêva. The first comer might kill him without trial, and to do so was a means of redeeming an ordinary capital crime.[6] To touch a woman during the menses is an offence punishable with stripes.[7] Abortion practised by an unmarried girl brings the guilt of wilful murder both on her and her lover.[1] Probably the fear of bringing a curse of barrenness on the land is the dominating motive in these ordinances. The "first wailing" of the goddess Ashi is over the courtesan who destroys her fruit; the second is over the courtesan who passes off a strange child as her husband's; the third over "the worst deed that men and tyrants do, namely, when they deprive maids that have been barren for a long time of marrying and bringing forth children."[2] The procreation of legitimate children is the common point of interest in the three cases, and it is quite in accordance with the general tendency of the teaching of the Avesta that this should be a primary consideration, and that everything hostile, or, on magical grounds, conceived to be hostile to it, should be a deadly offence. The intermixture of magical and ethical ideas is well seen in the list of evils created by Angra Mainyu in all the lands which Ahuramazda made. They comprise—

---

[1] *Zend Avesta*, i. 201.

[2] *ib.*, vol. ii. p. 23.

[3] *ib.*, iii. 368.

[4] *ib.*, 318. The principle of group-morality—here represented by the religious bond—comes out quaintly in the provision that a would-be doctor is to practise first on Daêva worshippers. If three of them die under his knife, he is never to operate on Mazdaists, under the same penalty as for wilful murder. If three recover, he can practise on Mazdaists (*ib.* i., 85). Sometimes the blessings of the creed are jealously reserved, as in the following: "Mazda! Shall the thieving nomad share the good creed . . ." (*ib.*, iii. 46). But elsewhere there is evidence of a more catholic spirit and even of the conversion of a neighbouring tribe.

[5] *ib.*, i. 205.

[6] *ib.*, i. 104.

[7] *ib.*, p. 188.

> The serpent in the river, winter, the locust, plunder and sin, the corn-carrying ants, the sin of unbelief, the stained mosquito, the Pairika Knãthaiti (idolatry), the sin of pride, the unnatural sin, the burying of the dead, the evil work of witchcraft, the sin of utter unbelief, the cooking of corpses, abnormal issues in women, and barbarian oppression.[3]

The tendency of the moral element to predominate, however, appears in the account of the circumstances giving value to prayer. Recitations of the praise of Holiness is of different value on different occasions. For instance, if uttered when eating the gifts of Havratat and Ameretat, it is worth ten others. If when drinking Haoma (the Indian Soma), it is worth a hundred. The conception here is primarily magical — the quality of the Haoma intensifying the value of the praise, and the fact of eating or drinking increasing its effect on the worshipper. But when, finally, the question is asked: "What . . . is worth all that is between the earth, and the heavens, and this earth, and that luminous space, and all the good things made by Mazda, that are the offspring of the good principle in greatness, goodness, and fairness?" Ahura Mazda answered: "It is that one, O Holy Zarathustra, that a man delivers to renounce evil thoughts, evil works, and evil deeds."[4] Thus in the end the ethical conception of worship is made to predominate.

Ethical also in essence is the vivid picture of future retribution.[5]

---

[1] *Zend Avesta*, p. 178.
[2] *ib.*, vol. ii. p. 281 ff.
[3] *ib.*, i. 4 ff.
[4] *ib.*, ii. 313.
[5] *ib.* ii., 315.

"At the end of the third night, when the dawn appears, it seems to the soul of the faithful one as if it were brought amidst plants and scents; it seems as if a wind were blowing from the region of the south, from the regions of the south a sweet-scented wind, sweeter-scented than any other wind in the world.

"And it seems to the soul of the faithful one as if he were inhaling that wind with the nostrils, and he thinks: 'Whence does that wind blow, the sweetest-scented wind I ever inhaled with my nostrils?'

"And it seems to him as if his own conscience were advancing to him in that wind, in the shape of a maiden fair, bright, white-armed, strong, tall-formed, high-standing, thick-breasted, beautiful of body, noble, of a glorious seed, of the size of a maid in her fifteenth year, as fair as the fairest things in the world.

"And the soul of the faithful one addresses her, asking: 'What maid art thou, who art the fairest maid I have ever seen?'

"And she, being his own conscience, answers him: 'O thou youth of good thoughts, good words, and good deeds, of good religion, I am thine own conscience!

"'Everybody did love thee for that greatness, goodness, fairness, sweet-scentedness, victorious strength and freedom from sorrow, in which thou dost appear to me;

"'And so thou, O youth of good thoughts,' etc., 'didst love me for that greatness,' etc., 'in which I appear to thee.

"'When thou wouldst see a man making derision and deeds of idolatry, or rejecting (the poor) and shutting his door, then thou wouldst sit singing the Gâthas and worshipping the good waters and Atar, the son of Ahura Mazda, and rejoicing the faithful that would come from near or from afar.

"'I was lovely, and thou madest me still lovelier; I was fair, and thou madest me still fairer; I was desirable, and thou madest me still more desirable; I was sitting in a forward place, and thou madest me sit in the foremost place, through this good thought, through this good speech, through this good deed of thine; and so henceforth men worship me for my having long sacrificed unto and conversed with Ahura Mazda.'"

In the same third night the conscience of the wicked appears to him in the form of a "profligate woman, naked, decayed, gaping, bandy-legged, lean-lipped, and unlimitedly spotted, so that spot was joined to spot, like the most hideous noxious creature, most filthy, and most stinking."[1]

The creed of Zoroaster is not monotheism, though it had monotheistic tendencies, which developed in proportion as stress was laid on the final victory of Ahuramazda and the destruction of Angra Mainya. But neither was it ordinary polytheism. It was a unique expression of the dualism of nature which few other creeds, if any, have ever attempted to face. As such it left a legacy in the conception of the devil to later religions. It is deeply immersed in magical ideas, which makes its code with its grotesque offerings and horrible punishments perhaps the most extraordinary document in the whole history of Ethics. Yet amid this it had also firmly seized certain moral truths—hardly yet the deeper truths of the spiritual religions, but the truths consonant to the character of an early civilization—the purity of the home life, truthfulness, good faith, neighbourly help and hospitality. It conceived that man's duty is to master the earth, to tend the kine, to be fruitful and multiply, and that this was to lend power to the good spirit and aid its ultimate triumph over the demonic forces of Death and the desert. For those who forwarded the work there was a rich reward laid up hereafter—and for the evil that appalling meeting with their own conscience which was the opening of hell.

---

[1] *Zend Avesta*, ii. 319, note.

4. A far greater advance on the primitive Indo-Persian religion was made in India itself. Here, long before the age of Buddha, at a date quite unknown to us, the Vedic religion was developed into a metaphysical system, probably the first metaphysical religion of history. Not only had the gods been traced to emanations from a single principle—this would not in itself, perhaps, have brought the Brahman further than the esoteric wisdom of Egypt—but, what is for ethical purposes more important, this supreme principle was identified with the true self or personality of man, an identification which makes the spirituality of the Divine for the first time its essential feature.

"The intelligent, whose body is spirit, . . . He is myself, within the heart; smaller than a corn of rice, smaller than a corn of barley, smaller than a mustard-seed, smaller than a canary-seed or the kernel of a canary-seed. He also is myself within the heart, greater than the earth, greater than the sky, greater than heaven, greater than all these worlds. He from whom all works, all desires, all sweet colours and tastes proceed, who embraces all this, who never speaks, and who is never surprised, he, myself within the heart, is that Brahman. . . . When I shall have departed from hence, I shall obtain him (that Self). He who has this faith has no doubt."[1]

---

[1] *Upanishads*, i 48.

We have here the first principle of all mysticism, that God and the self are one. But we have also something greater than mysticism, the discovery that the true self is something distinct from and opposed to the material body and the life of the senses, something that can be smaller than a grain of mustard-seed because not an object in space at all, yet greater than the universe because embracing all things. Matter is not spirit, nor do images and conceptions drawn from matter serve to define the Spirit, which is known rather by its opposition to them, as the self which we find when we get beneath the bodily shell and think away the objects of sensuous knowledge. Indeed, the only doubt is whether the self as that which knows can also be known.

> "How should he (the Self) know Him by whom he knows all this? That self is to be described by No, No! He is incomprehensible, for he cannot be comprehended; he is imperishable, for he cannot perish; he is unattached, for he does not attach himself; unfettered, he does not suffer, he does not fail. How, O beloved, should he know the Knower?"[1]

But this sceptical movement does not prevent the triumphant identification of the self with the universal Spirit. The self is the true totality of things, and he who has achieved this wisdom, attaining to self-knowledge and self-mastery, attains also to a lordship of all things.

> "Now follows the explanation of the Infinite as the 'I.' 'I am below; I am above, I am behind, before, right and left—I am all this.' Next follows the explanation of the Infinite as the Self. 'Self is below, above, behind, before, right and left—Self is all this.' 'He who sees, perceives, and understands this, loves the Self, delights in the Self, revels in the Self, rejoices in the Self—he becomes a Svarâg (an autocrat or self-ruler); he is lord and master in all the worlds. But those who think differently from this, live in perishable worlds, and have other beings for their rulers."[2]

Inner knowledge is the centre of mysticism; through this knowledge man achieves self-mastery, and self-mastery is world-mastery; for the true self, illusions thrown off, is the reality of all that is. How then do men attain knowledge? Neither work, nor prayer, nor much learning, nor penance, are sufficient. But these, it would appear, form a ladder whereby men escape from the impurity of sensual existence, and reach the clearer air of self-mastery. "By truthfulness in deed, by penance right knowledge and abstinence must that self be gained."[1] The rules of morality and religious ceremonial are presupposed.

---

[1] *Upanishads*, ii. 185. Cf. *Upanishads*, p. 112, where the duality (of subject and object) involved in knowledge is insisted on, and the difficulty is raised how the self which is the knower can also be the known.

[2] *ib.*, i. 123, 124.

> "There are three branches of the law—sacrifice, study and charity are the first; austerity the second; and to dwell as a Brahmakârin in the house of a tutor, always mortifying the body . . . is the third."[2]

The Brahmanic Code[3] is naturally more explicit on this point than the mystical books. And not only does it make conduct the foundation of the spiritual life, but we find it advancing to the ethical view that good conduct is truly good only when preferred for its own sake, independently of the conception of reward or punishment. "The sages, who saw that the sacred law is thus grounded on the rule of conduct, have taken good conduct to be the most excellent root of all austerity,"[4] and "to act solely from a desire for rewards is not laudable, yet an exemption from that desire is not (to be found) in this (world), for on (that) desire is grounded the study of the Veda and the performance of the actions prescribed by the Veda."[5] This is perhaps a little halting, but in the concluding book of the code we find a more emphatic sentence. "Acts which secure (the fulfilment of) wishes in this world or in the next are called pravritta (such as cause a continuation of mundane existence); but acts performed without any desire (for a reward) preceded by (the acquisition) of (true) knowledge, are declared to be nivritta (such as cause the cessation of mundane existence)."[6] Abandonment of all earthly affections is the final condition of supreme felicity. "If a man, though well enlightened, is still pierced by passion and darkness and attached to his children, wife and house, then perfect Yoga is never accomplished."[1] On the other hand, perfect knowledge raises man above the capacity for sin. Indra said . . . "he who knows me thus, by no deed of his is his life harmed, not by the murder of his mother, not by the murder of his father, not by theft, not by the killing of a Brahman. If he is going to commit a sin, the bloom does not depart from his face."[2]

---

[1] *Upanishads*, ii. 39. Sometimes the Brahmanist thinker seems to be stumbing on the brink of the theory of Election, as: "That self cannot be gained by the Veda, nor by understanding, nor by much learning. He whom the Self chooses, by him the Self can be gained" (*ib.*, ii. 11). For abstinence as a condition, cf. i. 130.

[2] *ib.*, i. 35.

[3] In citing Manu as evidence for Brahmanic teaching, we must bear in mind that the code as we have it is a growth of many centuries incorporating elements of various origin. To attempt to disentangle the sources of different sections, or to determine their chronological sequence, would, however, lead to a special inquiry far beyond the scope of this work. For our purposes we must be content to take the code with all its inconsistencies at its face value, as representing the ideas at work in the Brahmanic world over a long period.

[4] Manu, i. 110.

[5] *ib.*, ii. 2.

[6] *ib.*, xii. 89.

Two notes are sounded here that echo through the whole history of mystical religion. All ordinary human ties are broken by a spiritual principle which puts everything belonging to this world into a secondary place. And in close conjunction with this feature we have the elevation of an inward state of mind as the highest goal, supreme above all conduct—the one element in conduct of vital importance being in fact merely the self-repression required in order that this inward state may come into being. Both these features belong to the first clear apprehension of the spiritual element in man, and its sharp opposition to the sensual. In this early stage it cannot be apprehended that the truly spiritual is something that forms and inspires the world of perception, that fashions lowly efforts to great ends and transfigures humble daily life with the light and glow of self-sacrifice and love. Become for the first time conscious of itself, the spirit wants a dramatic display of its independence. It must show its utter contempt for the material world, and in this unfortunately it includes those very human relations which are the true sphere of its activity. It knows self-control to be the foundation of its existence, and it makes the practice of self-control the one supreme and all-embracing end of conduct. These are common, and on the whole distinctive, features of the first stage of spiritual religion. True, the ascetic tendency and the cult of pain are deeply rooted in human nature, and play an important part even in savage life. Painful initiations as tests of virility are one of the commonest of savage institutions. Down to the lowest grades men honour those who can endure. But it is with the rise of spiritual religion that asceticism takes rank as the supreme law of salvation.

Asceticism links itself naturally to the conception of penance, and here again we come in Brahmanism upon the beginnings of a spiritual theory of man's regeneration. We have seen that the Babylonian who sought to avoid the consequences of his sins had no better method than to resort to an incantation, which was in the first place a form of repudiation, and in the second place a ceremonial purification, in which the sins were washed or scoured or thrown away or burnt out of him by one of the processes of sympathetic magic. We have also seen reasons for thinking that in the Egyptian Judgment of the Dead, at least in its old form, the negative confession had a similar significance. In the Brahman's Code we find a distinct advance towards an ethical conception of repentance.

---

[1] *Upanishads*, ii. 326.

[2] *ib.*, i. 283.

"By confession, by repentance, by austerity and by reciting (the Veda) a sinner is freed from guilt, and in case no other course is possible, by liberality. In proportion as a man who has done wrong, himself confesses it, even so far he is freed from guilt, as a snake from its slough. In proportion as his heart loathes his evil deed, even so far is his body freed from that guilt."[1]

Higher and lower elements contend in this passage. At times we seem near to the ethical view of purification through the acknowledgment of guilt and the ready acceptance of inevitable suffering, as the way and means towards a true change of heart. At other times we relapse into the magical conception of the potency of a formula, and learn that "even he who has stolen gold instantly becomes free from guilt if he once mutters" a certain hymn.[2] The old magic crops up by the side of the higher spiritualism, and the veil of mystical imagination drawn over all forbids that clear, remorseless scrutiny by which alone the doctrine of the spirit can be kept pure. Apart from the medicinal effect of repentance, confession, and forgiveness, the Brahmanistic religion took a stringent view of the consequences of guilt. If a man did not suffer for guilt in this life, it came upon him in the next. After passing through hell, he was reincarnated in some loathsome animal form. If the punishment did not fall upon the sinner, it might, by the principle of vicarious justice, fall upon his sons or his descendants or his ancestors. Manu says, "If (the punishment falls) not on (the offender) himself, (it falls) on his sons; if not on the sons, (at least) on his grandsons"; but there is a saving clause which shows that vicarious justice no longer wholly satisfies. "But an iniquity (once) committed never fails to produce fruit to him who wrought it."[3]

The doctrine of transmigration is interwoven with the most serious aberration in the Brahmanic ethics, since it offered, as we have seen,[4] a theoretical justification for the deepening divisions of caste.[5] We also saw, it is true, that these divisions were the subject of much questioning among thinkers. But it was not the function of Brahmanism to ameliorate social life. Life in human society was a life of error in which the true Brahman remained only to fulfil his duty to his ancestors by begetting a son to continue their cult. His true life was in the forest, conquering the senses and coming to the knowledge of his spiritual self. Yet with this contempt for worldly values Brahmanism is able to make some advance towards those ethical positions which characterize the higher spiritual religions.

---

[1] Manu, xi. 228, 229, 230.

[2] *ib.*, xi. 251; cf. 249, 250, 252.

[3] *ib.*, iv. 173.

[4] Part I. chap. vii.

[5] The Sudra, and still more the outcast Kandala, was justly despised and kept apart from the Brahman because he was the incarnation of a soul

The Brahman is to avoid causing pain even within his rights. "Let him not be uselessly active with his hands and feet, or with his eyes, nor crooked (in his ways), nor talk idly, nor injure others by deeds or even think of it."[1] Consideration for all life, animal as well as human, is in more than one place urged, though the rule is not consistently carried through. "For that twice-born man, by whom not the smallest danger even is caused to created beings, there will be no danger from any (quarter) after he is freed from his body."[2] Malice is condemned, "neither a man who (lives) unrighteously, nor he who (acquires) wealth (by telling) falsehoods, nor he who always delights in doing injury, ever attain happiness in this world."[3] If the eating of meat except in sacrifice[4] is forbidden, this is perhaps an outcome of primitive ideas which at times verge upon zoolatry. But a more rational conception of the general sanctity of life is implied in the rule, "Let him never seek to destroy an animal without a (lawful) reason"; and in some places a true consideration for animals is blended with rules traceable to principles of magic. "Let him not travel with untrained beasts of burden, nor with (animals) that are tormented by hunger or disease, or whose horns, eyes, and hoofs have been injured, or whose tails have been disfigured. Let him always travel with beasts which are well broken in, swift, endowed with lucky marks, and perfect in form and colour, without urging them too much with the goad."[5] As to enemies, the Brahmanistic Code does not go so far as Lao Tse in bidding us to recompense evil with good,[6] but it preaches rather the ignoring of an enemy:

---

suffering for its misdeeds in some prior existence. Far from bringing relief to the despised and oppressed, Brahmanism stamped caste divisions with the seal of religion, and if it did not invent them, at least gave them the iron fixity which holds Indian society bound and fettered to this day.

[1] Manu, iv. 177.
[2] *ib.*, vi. 40.
[3] *ib.*, iv. 170.
[4] *ib.*, v. 31.
[5] *ib.*, iv. 67, 68.

[6] Yet in the Mahabharata we read the Buddhist verse, "Let a man overcome anger by kindness, evil by good; let him conquer the stingy by a gift, the liar by truth" (Rhys Davids, *Buddhism*, p. 130 note).

"Let him not show particular attention to an enemy, the friend of an enemy, to a wicked man, to a thief, or to the wife of another man."[1] If these words hardly suggest that it is forgiveness that is in question, but rather the avoidance of strife, on the other hand we read further on that forgiveness and liberality are means to purification. "The learned are purified by a forgiving disposition; those who have committed forbidden actions by liberality."[2] Yet the following clause seems to be the Mosaic law at a little higher remove. "Making over (the merit of his own) good actions to his friends, and (the guilt of) his evil deeds to his enemies, he attains the eternal Brahman by the practice of meditation."[3] Lastly, forgiveness is a maxim of kingcraft. "A king who desires his own welfare must always forgive litigants, infants, aged and sick men, who inveigh against him. He who being abused by men in pain pardons (them), will in reward of that (act) be exalted in heaven; but he who, (proud) of his kingly state, forgives them not, will for that (reason) sink into hell."[4]

For the rest, the Brahmanic teaching, as we have seen, adheres to the Oriental view of women.[5] It lays down certain rules of humanity and chivalry in warfare.[6] In private intercourse it teaches the duty of truthfulness combined with courtesy. It insists much upon the avoidance of low occupations and mean methods of gain,[7] and even preaches holding aloof from a king who is not of a true kingly caste.[8]

---

[1] Manu, iv. 133.

[2] *ib.*, v. 107.

[3] *ib.*, vi. 79.

[4] *ib.*, viii. 312, 313.

[5] See above, Part I. chap. v.

[6] Part I. chap. vi.

[7] Betting and gambling are declared equivalent to "open theft" (Manu, ix. 222).

[8] "Let him not accept presents from a king who is not descended from the Kshatriya race, nor from butchers, oil-manufacturers, and publicans, nor from those who subsist by the gain of prostitutes. One oil-press is as (bad) as ten slaughter-houses, one tavern as (bad) as ten oil-presses, one brothel as (bad as) ten taverns, one king as (bad as) ten brothels. A king is declared to be equal (in wickedness) to a butcher who keeps a hundred thousand slaughter-houses; to accept presents from him is a terrible (crime). He who accepts presents from an avaricious king, who acts contrary to the Institutes (of the sacred law), will go in succession to the following twenty-one hells" (Manu, iv. 84, etc.). Some conception of the spirit of the Brahmanic Code, and of the very diverse elements entering into it, may be obtained by comparing the lists of principal and minor offences. The following are mortal sins: "Killing a Brahmana, drinking (the spirituous liquor called) Sura, stealing (the gold of a Brahmana), adultery with a Guru's wife, and associating with such (offenders) . . . Slaying a friend . . . stealing men . . . carnal intercourse with sisters by the same mother, with (unmarried) maidens, with females of the lowest castes, with the wives of a friend, or of a son." . . . On the other hand: "Adultery, selling oneself, allowing one's younger brother to marry first, . . . giving a daughter

The Brahmanic Code is not the work of reformers or of men inspired with a social or humane ideal. It is the code of a society in which barbaric elements survive, but which has made great advances in civilization, and of a priesthood which has grasped certain sides of spiritual truth, but has neither disencumbered itself of primitive ways of thought, nor advanced to the point at which the ethical and spiritual unite. Its spiritual interpretation of the divine unity was such as readily to make terms with polytheism. For though all the gods and all human beings too were emanations from the one spirit, it does not follow that the many gods lose their reality. On the contrary, the way is prepared for the series of emanations—Vishnu, an emanation from Brahma; Krishna, an emanation of Vishnu; and Krishna himself impersonated in many successive incarnations—a system which retains many of the essentials of polytheism, under the shell of metaphysical theory. What was worse was that its mysticism could make terms with magic; it could find spiritual efficacy in a formula, and conceive austerity as conferring, not an ethical self-conquest, but miraculous powers. Finally, at its best, the Brahmanic view of life is pessimistic and its highest ideal is the sage who, having performed his duties, has emancipated himself from human relations and entered into the spiritual kingdom of the god within his breast. It contains no message of comfort for the sufferer, of love, of forgiveness, of humility. Still less does it proclaim an ideal of social justice. It leaves us with the picture of the emaciated hermit dreaming, in the trance of semi-starvation, of himself as one with the centre of things, a God self-created by his own afflicted brain.

5. The relation of Buddhism to Brahmanism has sometimes been compared to that of Protestantism to the Catholic Church. It is, at any rate, only by appreciating the central doctrines of Brahmanism that we can begin to understand Buddha's attitude. The Brahman held life to be on the whole an evil, from which it was the object of the higher knowledge to deliver its possessor. Every Brahmanic system had its own theory of the method of escape from the chain of existences. Buddha had a new theory, and one which, with the same element of pessimism at its root,

---

to . . . (either brother) . . . defiling a damsel, usury, . . . selling a tank, a garden, one's wife, or child, . . . living as a Vratya, casting off a relative, . . . superintending mines, . . . subsisting on (the earnings of) one's wife . . . cutting down green trees for firewood, doing acts for one's own advantage only, . . . slaying women, Sudras, Vaisyas, or Kshatriyas, and atheism" are all minor offences causing loss of caste.

was in closer touch alike with average human nature and with the higher ethical consciousness of mankind. Buddha's great discovery was the want of permanence in the whole world of phenomena, the whole world of change. Whatever has a beginning must also have an end. And so there appeared the possibility of an ultimate cessation from the wheel of suffering, an ultimate disentanglement from the chain of earthly existences. Transmigration is, in a modified form, a central doctrine still, but it is not strictly a transmigration of the soul, for the soul, according to the strict Buddhist, is a figment. The constitutive elements of the human being come together at birth, and are dissolved at death. If the good and evil he does live after him, it must be very strictly maintained that it is the good and evil only that live and not he himself. In other words, every cause has its effect. Whatever good I do has a permanent, so to say, spiritual efficacy, and equally whatever evil I do. But the effect is shown in a peculiar way. My personality does not survive, but my good and my evil works survive, and they determine the fate of another being, which comes into existence, as it were, to carry on my moral destiny. This is the difficult and much misunderstood doctrine of Karma, a doctrine which a modern metaphysician might phrase somewhat after this fashion: that it destroys the substantiality of the soul while leaving its causality; the stream of moral consequences becomes a stream of mere causation from which the personality of the moral subject is removed. But, further, Karma has, as it were, one central cause—Desire, the will to live, self-assertion. It is on account of this desire that I maintain my individuality, that I remain shut up within my selfish interests, that I maintain myself as a distinct being from the universe at large; and because this desire is, Karma is, and the results of my personal character are perpetuated. If I would seek emancipation from the chain of earthly existences I must put an end to Karma, and to put an end to Karma I must put an end to desire; and to put an end to desire I must train myself in the doctrines of the Buddha which teach me the unreality and the valuelessness of all earthly things, and raise me to that emancipation from self, from worldly interests, from all care for the things of this transitory being, which is for the Buddhist the dream of bliss. I must, in short, attain to the extinction of individuality—that is, to use a technical and deeply misunderstood term, to Nirvana, for Nirvana is not, as is often thought, utter extinction; on the contrary, it is a real state of real people in this earthly existence, it is the state of the Arahat, a state reached by those who have trodden the path marked out for them to the end and gained the summit of the ascent. Nirvana means extinction, but it does not mean extinction of life, but extinction of those desires and lusts which war, not, as in Christianity, against the soul, but rather for the perpetuation of individuality, which form a barrier between the world and me, which make me, in short, an individual, and prevent me from reaching that state of blissful contemplation, of perfect benevolence, and total selflessness which alone can prevent the law of Karma from bringing another being into existence in my place, when my earthly career is ended. We now have before us the "four noble truths" in which the doctrine of Buddha is summed up. The first is the truth about suffering. All transient existence involves suffering; birth and death, growth and decay, the frustration of desire, the longing that cannot be satisfied, all that belongs to our existence as individuals—all are full of suffering. There may be joy too, but pain cometh at the end, and the word is written large over the final balancement of accounts. The second truth is the truth about the cause of suffering, which is the craving for the satisfaction of desire, the craving that maintains life and causes its renewal. The third truth is that suffering is brought to an end by the conquest of this craving. And the fourth truth is that the path leading to the cessation of suffering is the "noble eight-fold path," by which the craving of desire is laid to rest.[1] The eight-fold path, therefore, contains in little both the ethics and the practical religion of Buddhism, which is on the one hand opposed to the sensuality of this life, and on the other to the ascetic extremes of Brahmanism.

"What is that middle path, O Bhikkus, avoiding these two extremes discovered by the Tathagata? Verily! it is this noble eight-fold path; that is to say—

"Right views;
Right aspirations;
Right speech;
Right conduct;
Right livelihood;
Right effort;
Right mindfulness; and
Right contemplation."[2]

The pursuit of the eight-fold noble path liberated the follower of Buddha from the ten following fetters in succession, namely: 1. Delusion of self. 2. Doubt. 3. Dependence on works.

---

[1] *Buddhist Suttas, Sacred Books of the East,* vol. xi. pp. 148, 149.
[2] *Op. cit.,* pp. 146, 147.

4. Sensuality. 5. Hatred. 6. Love of life on earth. 7. Desire for life in Heaven. 8. Pride. 9. Self-righteousness. 10. Ignorance. It is not till the first five fetters are destroyed that the Buddhist becomes an Arahat, and it is not until the remaining five are abolished that he has finally put an end to delusion and sorrow.[1] It was not impossible for a layman, living the ordinary life of a householder, to enter upon the path and even to attain to Nirvana, but though not impossible, it was extremely difficult.

> "Full of hindrances is household life, a path defiled by passion; free as the air is the life of him who has renounced all worldly things. How difficult is it for the man who dwells at home to live the higher life in all its fulness, in all its purity, in all its bright perfection! Let me then cut off my hair and beard, let me clothe myself in the orange-coloured robes, and let me go forth from a household life into the homeless state."[2]

Hence the order of mendicants, or Bhikkhus, an order of celibates who were to attain to Nirvana, or to tread the path to Nirvana, as each individual's capacity would allow him, and to reach it, not by exaggerated abstinence, or extreme mortification of the flesh, but by simple adhesion to rules of life based on the conception of virtue as resting in selflessness, the avoidance of desire, the avoidance of injury to others, the cultivation of love, and the destruction of hatred. These were the simple elements constituting the rules of the Bhikkhu's life and simply formulated in the eight precepts—

> "One should not destroy life.
> One should not take that which is not given.
> One should not tell lies.
> One should not become a drinker of intoxicating liquors.
> One should refrain from unlawful sexual intercourse—an ignoble thing.
> One should not eat unseasonable food at nights.
> One should not wear garlands or use perfumes.
> One should sleep on a mat spread on the ground."[3]

These eight precepts apply to all Buddhists, including householders.[4] Two more are binding on mendicants, namely, to abstain from dancing, music, and stage plays, and from the use of gold and silver. These form with the first eight the ten moral rules of the order. With these may be compared the division into ten sins—

---

[1] See Rhys Davids, *Manual of Buddhism*, pp. 109, 110, etc.
[2] Suttas, pp. 187, 188.
[3] Rhys Davids, *Buddhism*, p. 139.
[4] The three last, however, are not obligatory.

"Three of the body—
  Taking life,
  Theft (taking what has not been given),
  Unlawful sexual intercourse.
Four of speech—
  Lying,
  Slander (includes 'saying here what one hears there'),
  Abuse (swearing),
  Vain conversation.
Three of the mind—
  Covetousness,
  Malice,
  Scepticism."[1]

Further, the Buddhist Manual of Ethics classifies moral duties under six heads: The natural obligations of Parents and Children, of Pupils and Teachers, of Husbands and Wives, of Friends and Companions, of Masters and Servants, of Laymen and the Religious. The insistence on the duties of the husband is noteworthy.

"The husband should cherish his wife—
  By treating her with respect.
  By treating her with kindness.
  By being faithful to her.
  By causing her to be honoured by others,
  By giving her suitable ornaments and clothes."[2]

Still more the injunctions on masters.

"The master should provide for the welfare of his dependents—
  By apportioning work to them according to their strength.
  By supplying suitable food and wages.
  By tending them in sickness.
  By sharing with them unusual delicacies.
  By now and then granting them holidays."[3]

The Manual concludes that liberality, courtesy, kindliness and unselfishness—"these are to the world what the linchpin is to the rolling chariot."

6. The character of the true Buddhist is summarized in the short paragraphs on conduct.

"He abstains from destroying life . . . and full of modesty and pity, he is compassionate and kind to all creatures that have life. . . . He abstains from taking anything not given. . . . He lives a life of chastity and purity, averse to the low habit of sexual intercourse. . . . He abstains from speaking falsehood. He abstains from calumny. What he hears here, he repeats not elsewhere to raise a quarrel against the people here. Thus he lives as a binder together of those who are divided, a peace-maker, a lover of peace, impassioned for peace, a speaker of words that make for peace. . . . He abstains from harsh language. Whatever word is humane, pleasant to the ear, lovely, reaching to the heart, urbane, pleasing to the people, beloved of the people—such are the words he speaks. . . . He abstains from vain conversation. He refrains from injuring any herb or any creature. He takes but one meal a day. . . . He abstains from dancing, singing, music, and theatrical shows. . . . He abstains from the getting of silver or gold. He abstains from the getting of grain uncooked. He abstains from the getting of flesh that is raw. He abstains from the getting of any woman or girl. He abstains from the getting of bondmen or bondwomen. He abstains from the getting of sheep or goats. . . . He refrains from carrying out those commissions on which messengers can be sent. He refrains from buying and selling. He abstains from tricks with false weights, alloyed metals, or false measures. He abstains from bribery, cheating, fraud, and crooked ways. He refrains from maiming, killing, imprisoning, highway robbery, plundering villages, or obtaining money by threats of violence."[1]

---

[1] Rhys Davids, *Buddhism*, p. 142. [2] *Op. cit.*, p. 145. [3] *ib.*, p. 146.

These precepts are expanded in the "middle" and "long" paragraphs, which further reprehend combats between animals, games of many kinds "detrimental to progress in virtue," mean talk, such as "tales of kings, of robbers, or of ministers of state: tales of arms, of war, of terror, conversation respecting women, warriors, demi-gods, ghost stories, empty tales." They deprecate wrangling about orthodoxy; reproach those who perform "the servile duties of a go-between," that is, between kings, ministers of state, Brahmans, etc.; denounce hypocrisy, divination, magic; reprobate those who make their living by predicting eclipses, or a rainfall, "or by drawing up deeds, making up accounts, giving pills, making verses, or arguing points of casuistry"; by giving advice about marriage, imparting magical formulæ, and so forth. If some of these prohibitions appear to us oddly assorted, the general purport is clear enough. The follower of Buddha is to hold aloof, on the one hand, from the frivolities and sensualities of the life of pleasure; on the other, from the quackery and professions[2] mixed up with quackery into which the lower forms of religion so easily slide. But underlying all this is the ideal goodness as consisting in universal love.

---

[1] *Suttas*, p. 189.

[2] In the *Vinaya Texts*, vol. iii. p. 152, sacrifices to the gods are included among the "low arts" which a Bhikkhu is not to teach. On the other hand, in vol. ii. p. 103, the prudent man, wherever he takes up his abode, is recommended "to make offerings" to all such deities as may be there.

> "And he lets his mind pervade one quarter of the world with thoughts of love, and so the second, and so the third, and so the fourth. And thus the whole wide world, above, below, around and everywhere, does he continue to pervade with heart of Love, far-reaching, grown great, and beyond measure. Just, Vasettha, as a mighty trumpeter makes himself heard—and that without difficulty—in all the four directions; even so of all things that have shape or life, there is not one that he passes by or leaves aside, but regards them all with mind set free, and deep-felt love."[1]

With this we may compare the character of the great King of Glory, the ideal Buddhist ruler, realized in some measure in the great King Asoka of Magadha. The King of Glory's greatness depends on three qualities: those of forgiving, of self-conquest, and self-control. And in this rule of love the doctrine of Lao Tse is fully observed.

"For never in this world does hatred cease by hatred;
Hatred ceases by love; this is always its nature."
"Whatever an enemy may do to an enemy,
Or an angry man to an angry man,
A mind intent on what is wrong
Works evil worse."
"One may conquer a thousand thousand men in battle,
But he who conquers himself alone is the greatest victor."
"Let a man overcome anger by kindness, evil by good;
Let him conquer the stingy by a gift, the liar by truth."[2]

The Gospel precepts of humility and self-knowledge naturally find a place here. "Not the perversities of others, not their sins of commission and omission, but his own misdeeds and negligences should a sage take notice of"; and again, "One's own self conquered is better than all other people."[3] Spiritual perfection is the supreme object and higher than all sacrifices.

---

[1] *Buddhist Suttas*, p. 201.

[2] Rhys Davids, p. 128. Compare the story of King Dîghîli in the *Vinaya Texts*, vol. ii. p. 298 ff.

[3] *Dhammapada*, chap. iv. 50; *ib.*, viii. 104. Compare the rule, "No Bhikkhu who has not given leave may be reproved for an offence—I prescribe, O Bhikkhus, that you reprove Bhikkhus for an offence only after having first asked leave by saying, Give me leave, reverend brother, I wish to speak to you" (*Vinaya Texts*, vol. i. p. 264).

For the mildness of penalties in the early Buddhist order, cf. vol. iii. p. 119, and the translator's remarks.

"If a man for a hundred years sacrifice month by month with a thousand, and if he, but for one moment, pay homage to a man whose soul is grounded (in true knowledge), better is that homage than a sacrifice for a hundred years."[1] The "Arahat" is as far above earthly things as the stoical wise man. "As a solid rock is not shaken by the wind, wise people falter not amidst blame and praise."[2] But by the same consequence responsibility and purification are individual. "By oneself the evil is done, by oneself one suffers, by oneself evil is left undone, by oneself one is purified. . . . No one can purify another."[3] And the essence of purification is the ethical change of heart. Buddha accepts the confession and petition for forgiveness of Vaddha the Tikkhavi. "For this, O friend Vaddha, is the advantage of the discipline of the noble one, that he who looks upon his sin as sin and makes amends for it as is meet, he becomes able in future to restrain himself therefrom."[4] The saint must not look for success in this world. He finds his happiness in disregarding its hate. "We live happily indeed, not hating those who hate us."[5] Again, "Victory breeds hatred, for the conquered is unhappy."[6] Again, "Not to blame, not to strike . . . to be moderate in eating, to sleep and sit alone and to dwell on the highest thoughts, this is the teaching of the Awakened."[7] Hence the duty of non-resistance: "No one should attack a Brahmana, but no Brahmana (if attacked) should let himself fly at his aggressor. Woe to him who strikes a Brahmana, more woe to him who flies at his aggressor."[8] The distinctions of caste are overcome—

"I do not call a man a Brahmana because of his origin, or of his mother, but the poor who is free from all attachments, him I call a Brahmana."[9] "Him I call indeed a Brahmana who,

---

[1] *Dhammapada*, viii. 106.
[2] *ib.*, vi. 81.
[3] *ib.*, xii. 165.
[4] *Vinaya Texts*, vol. iii. p. 123.
[5] *Dhammapada*, xv. 197.
[6] *ib.*, xv. 201.
[7] *ib.*, xiv. 185.
[8] *ib.*, xxvi. 389.

[9] Ordination, however, was forbidden, not only to criminals and debtors but to slaves, eunuchs, dwarfs, hunchbacks, one-eyed people, the blind, dumb and deaf; to a person that gave offence (by depravity) to those who saw him, etc. (*Vinaya Texts*, vol. i. pp. 199, 224–225; cf. p. 215). A quaint rule prohibits the ordination of an animal on the strength of a story of a serpent taking human shape and becoming ordained (*ib.*, pp. 217–219), and one of the questions asked of candidates was, "Are you a human being?" (vol. iii. p. 349).

Women were admitted to ordination, but according to the account in the *Vinaya Texts* with much reluctance and in an inferior position. The Buddha at first declines altogether to institute a female order, but is overpersuaded by the faithful Ananda. Yet he foresees disaster as a consequence, wholly refuses to put Bhikkhunis and Bhikkhus on an equality, forbids any censure of Bhikkhus by Bhikkhunis, and ordains that a Bhikkhuni even though he has committed no offence, endures reproach, stripes, and bonds, who has endurance for his force, and strength for his army. Him I call indeed a Brahmana who is tolerant with the intolerant, mild with the violent, and free from greed among the greedy. Him I call indeed a Brahmana from whom anger and hatred, pride and hypocrisy have dropt like a mustard-seed from the point of a needle."[1]

This morality does not rest on a theological basis; though Buddha does not deny the gods, they play no important part in his scheme. It is rather the inherent character and inevitable consequences of conduct with which he is concerned. The ideas of reward and punishment are not indeed wholly absent, for not only is there reward in a temporary heaven and punishment in a temporary hell for those in the lower stages of the path,[2] but those who reach the highest are rewarded by the final cessation of the circle of existences. But this, after all, is a very negative reward. The noblest prize that Buddha offers to man is to attain in this life and now to inward perfection. Such perfection has its essence in the absence of passion and desire, and its manifestation in universal love, in forgiveness of sin, in forbearance with the wrong-doer, in humility and self-respect. It is an inward state obtainable by all men, and also by all women, independently of caste, nationality, or sex. Love is for all and salvation is open to all.

7. The selflessness of spiritual religion is carried to the point of self-emptying, the negation of action along with desire, in some forms of Mysticism. Of such Quietism probably the earliest extant expression is to be found in *The Path of Virtue*, by Lao Tse, an older contemporary of Confucius. Lao Tse is no theologian, but his system is historically connected with the Chinese conception of magical influences interpenetrating the whole physical world. The Tao, which is variously rendered by Way, Path, Truth, Reason,[3] is the course or process of the universe,[4] or perhaps, we may say, it is the one principle on

---

if a hundred years old, shall make obeisance to a Bhikkhu even if newly initiated. On the other hand, all confessions of women are to be made to women, and all disciplinary proceedings to be carried out in the same way (*Vinaya Texts*, vol. iii. pp. 320–332). It is hardly necessary to remark that the ascription of these details to Buddha himself is of no historical authority.

[1] *Dhammapada*, p. 92, secs. 396, 399, 406, 407.

[2] Strictly speaking, this part of the doctrine would have to be qualified by what has been said above as to Karma.

[3] Old, *The Simple Way*, p. 20.

[4] De Groot, *Religious System of China*, iv. 67.

which all the processes making up the life of the universe depend, or in which they are expressed. It is a magical conception refined into a metaphysical principle and made the basis of a system of mystical ethics. For the leading idea of the Tao would appear to be that man should surrender himself, his individuality, his self-assertion, his efforts to be positive, to rule others for their good, to be virtuous and benevolent—that he should abandon this vain self-assertion, and merge himself in the main stream of being which, flowing on its own course, sets all wrongs right, brings the proud to the ground, and exalts the humble and meek. "The sage governs by ridding the heart of its desires." [1] Going back to one's origin is called Peace: it is the giving oneself over to the inevitable.[2] The mystical paradox is that this excellent passivity is in reality the most effective of all modes of action. The sage "acts through non-action and by this he governs all." [3] The soft and the weak overcome the hard and strong.[4] To teach without words and to be useful without action —few among men attain to this.[5] Even from the personal point of view it is selflessness and restraint that yield happiness. "The more he (the wise man) gives to others, the more he has for his own." [6] "(The woman) conquers the man by continual quietness." [7] This wisdom practised by each would make virtue prevail in the community.[8] For coercion is no remedy for social ills. "When the actions of the people are controlled by prohibited laws, the country becomes more and more impoverished. The wise man says, 'I will design nothing, and the people shall shape themselves. I will keep quiet, and the people will find their rest. I will not assert myself, and the people will come forth. I will discountenance ambition, and the people will revert to their natural simplicity.'" [9] But not only is the government of the clever politician a "scourge." The ordinary virtues are really stumbling-blocks and rocks of offence. "By giving up their self-righteousness and abandoning their wisdom the people would be immensely improved. Forsaking Charity and Duty to the neighbour, they might revert to their natural relations." [10] That is to say, each should cultivate inward perfection and entire restraint—outward active virtues are a poor substitute for these. When Tao is lost it gives place to virtue, similarly in a descending scale virtue yields to benevolence, benevolence to justice, justice to expediency.[11] In this excellent passivity certain virtues are inculcated in their most ideal form—humility, universal charity, love of enemies: "The wise man knows no distinctions; he beholds all men as things made for holy uses."[1] "By governing the people with love it is possible to remain unknown."[2] "To joy in conquest is to joy in the loss of human life,"[3] and "whosoever humbleth himself shall be exalted, and whosoever exalteth himself shall be abased."[4] The doctrine of forgiveness is pushed to its furthest point: "I would return good for good. I would also return good for evil. . . . I would likewise meet suspicion with confidence."[5] And though wisdom prescribes passivity this is not from selfishness, for "the wise man lives . . . with modest restraint, and his heart goes out in sympathy to all men."[6] He is inactive because this is the method of true happiness. For "the wise man is a constant and good helper of his fellows,"[7] and the virtuous man acts "without hope of reward."[8]

---

[1] Old, chap. iii.
[2] *ib.*, chap. xvi.
[3] *ib.*, chap. iii.
[4] *ib.*, chap. xxxvi.
[5] *ib.*, chap. xliii.
[6] *ib.*, chap. lxxxi.
[7] *ib.*, chap. lxi.
[8] *ib.*, chap. lix.
[9] *ib.*, chap. lvii.
[10] *ib.*, chap. xix.
[11] *ib.*, chap. xxxviii.

Such is the first recorded expression of the full doctrine of non-resistance—a doctrine which, however one-sided and inapplicable to the affairs of men, enshrines the profound truth that moral influence is distinct from and superior to physical compulsion; that force, however necessary in immediate exigencies, settles nothing in the end, but is a menace to the moral balance of the society and of the individual that employ it; that men are capable of being influenced, not only by retaliation, but also, and more profoundly, by the deliberate refusal to retaliate. The system of Quietism gave an extreme expression to these truths. The world will always reject its ideas, and will always be haunted by them until the time comes when, disregarding the extravagances of form in which they are uttered, it begins to ask itself in sober earnestness what truth they contain.

Putting aside the idiosyncrasies of different doctrines and considering only the ethical teaching of the spiritual religions—what advances and what limitations do we find? To begin with—a certain ideal of character is preached as the goal of man's endeavours. To cultivate the best within himself and to aid others in the same work is the means of salvation. Human character, which in the lowest stages of moral thought is scarcely ever appreciated as a condition and cause of actions, is now a distinct object of activity, an end and aim of endeavour. Next, this ideal of character is conceived negatively as the destruction of selfishness, positively as the exercise of universal love. Here, again, elements which exist in all ethics from the lowest stage upwards are separated out and made into principles ruling conduct. For in the most primitive sense of duty to fellow-clansmen there is something of love and something of unselfishness, and something of the surrender of one's own desires and ways of thinking and personal pride. But these social centripetal qualities that tend to bind men together are inextricably intertwined with the fierce resentments, the pride of family or race, the antagonisms which break up human fellowship and keep men apart. Hence the group-morality of early times that we have described. Now in this higher stage of religion and ethics we see the socially constructive qualities distinguished and idealized and recognized as the source of human salvation. And yet, so roundabout is the path of human advance, in the very act and fact of being so idealized, their character as social qualities, their usefulness in organizing society, are in large measure annulled. They are conceived as being best cultivated apart from ordinary human ties, and as the foundation of a monastic brotherhood rather than of a living human society. Their negative side is emphasized. Self-negation is made more prominent than active kindness and love. Universal benevolence is held incompatible with the passionate personal love of woman and of child. The practice of ideal virtues seems too hard for the householder and the man of affairs. Those very qualities which should refine the world are thought to be soiled by the world. Self-surrender and universal love—the two pillars of the higher ethics—are set up, but they are left standing in a void.

---

[1] Old, chap. v.
[2] *ib.*, chap. x.
[3] *ib.*, chap. xxxi.
[4] *ib.*, chap. xxii.
[5] *ib.*, chap. xlix.
[6] *ib.*, chap. xlix.
[7] *ib.*, chap. xxvii.
[8] *ib.*, chap. x.

CHAPTER IV

MONOTHEISM

1. To the western world spiritual religion is familiar mainly in the form of the worship of one God, the creator and sustainer of all that is. If we conceive this form of belief as developing out of polytheism we may find approximations to it by several distinct paths. There is, first, the exaltation of one God as king over the rest, which will only lead to monotheism if the lesser deities become degraded to some lower plane of being. There is, secondly, the identification of all the gods with some one, an example of which has been seen in the Vedas. This is a natural effect of the feeling of worship, but it is checked in its development by the tendency to apply it to each god in turn, the result of which is that no single god obtains a definite and permanent supremacy. There is another and more subtle variant of this process wherein the several gods of mythology come to be regarded as manifestations of an underlying force, principle, or spirit, which is the sole reality—a line of development which leads rather towards Pantheism than towards Monotheism in the strict sense of the term. There is, lastly, the line of development which lies through the exclusive worship of one national god. This is the path through Monolatry to Monotheism, which was trodden in particular by the Jews. The Yahveh of early Judaism was not the one God, as we understand the term, but was the only God whom it was lawful for the Jews to worship. Yahveh was the God of Israel, just as Chemosh was the God of Moab. To each people, in Jephthah's view, their god has given their land, and this gift is their title thereto.[1] The worship of Yahveh is properly confined to the soil of Canaan. To be driven thence is to be compelled to serve other gods.[2] Even in Deu-

---

[1] Judges xi. 24. "Wilt thou not possess that which Chemosh thy god giveth thee to possess? So whomsoever the Lord our God hath dispossessed from before us, them will we possess." The power of Chemosh seems implicitly recognized in 2 Kings iii. 27. Cf. Montefiore, Hibbert Lectures, p. 35.

[2] Montefiore, *ib.* 1 Samuel xxvi. 19. Apparently this is the reason why Naaman begs two mules' burden of earth of Elisha, "for thy servant will henceforth offer neither burnt offering nor sacrifice unto other gods but unto the Lord" (2 Kings v. 17). These must be offered on Canaanitish soil.

teronomy, the First Commandment does not deny the existence of other gods, but forbids their being worshipped " before Me " or " beside Me."[1] Indeed, the Hosts of Heaven were in reality gods appointed by Yahveh himself for the protection of the nations of the world. They were gods, but God himself sat supreme in the congregation of gods, and while he had divided the lower gods among all the peoples under heaven, he had reserved the direct worship of himself alone for the children of Israel.[2] Even when God controls the whole upper earth, his writ does not at first run in the underworld : " Shall the pit give thanks unto Thee, or shall it declare Thy truth ? " It is a late Psalm which says : " If I climb up into heaven Thou art there, if I go down into hell Thou art there also."[3] The oneness of God and his supremacy over the whole earth are ideas which arose comparatively late in Hebrew thought, and are consequences rather than causes of a changed conception of his character. If Monotheism is taught—though indeed the teaching is implied rather than distinctly avowed—in the prophets before the exile, it is because with them the spirituality of Yahveh, his indifference to sacrifice and his love of righteousness are always first and foremost. It is his unique character which makes him the one and only God. God is not the Ideal Being because he is One, but is One because he is the Ideal Being, the impersonation of the moral law. This is widely removed from the primitive conception. The earlier Yahveh had a well-defined human personality. He walks in the garden of Eden in the cool of the evening. He smells the sweet savour of Noah's sacrifice and declares that he will never again curse the ground for man's sake. He is not wholly without fear of the men that he has made. They may obtain too much power. Adam " is become one of Us." When men have all one language they attempt, like the giants who piled Pelion on Ossa, to build a tower that will reach to heaven, " and now nothing will be withholden from them which they purpose to do." " So the Lord," having confounded their language, " scattered them abroad upon the face of all the earth."[4] He has not always a human shape. He can appear in a thick darkness or in a burning bush. Sometimes he seems to dwell among the cherubim of the ark. Sometimes he almost seems identical with the ark itself.[1] He is in magic fashion dangerous to his worshippers. To touch the ark, or "to break through unto the Lord to gaze"[2] was fatal. In other accounts he lives on Mount Seir and comes forth thence to battle. Afterwards he chooses Mount Sion for his habitation, and from Sion the prophet Amos declares that he would roar and utter his voice from Jerusalem.[3]

---

[1] R.V. marginal rendering, Deut. v. 7.

[2] Deut. iv. 19. Cf. Driver, *Deut.*, pp. 70, 71. Here monolatry fuses with the conception of a chief god. Yet in the very same chapter we find a different thought, the thought achieved with difficulty by the prophets. The gods of the nations are idols, " the work of men's hands, wood and stone, which neither see, nor hear, nor eat, nor smell " (Deut. iv. 28). Parallel passages are given by Driver, p. 73.

[3] The same idea, however, as Dr. Carpenter points out to me, is expressed by as early a writer as Amos (ix. 2).

[4] Genesis xi. 6-8.

As a human personality he is half a barbaric chief, half an Oriental despot, superhuman like the gods of Polytheism, because greater and more powerful than man, but no ideal as to his moral attributes; a jealous God, as he describes himself, capable of punishing the children for the fathers, according to the barbaric principle of collective responsibility; occasionally on the point of doing rash things, from which Moses, his Grand Vizier, with difficulty restrains him—asking him to consider what people will say, and representing that if he destroys his nation, others will ascribe it not to his want of will, but to his want of power to preserve them.[4] He is certainly from the first the God of Righteousness in the sense that he is the source and upholder of the law. But it is the law of a barbaric people, and a warlike race—a law with all the features of early group-morality and with some of them unpleasingly exaggerated. Yahveh is a man of war. He allows and even insists on the total destruction of the Canaanities. Agag is put to death before him. His favoured David smites every male in Edom, and puts the men of Rabbah under saws and harrows of iron.[5] His code recognizes the blood feud, vengeance for unintentional homicide, and vicarious responsibility. But if barbaric, the code has, as we have seen in detail, many of the best features of early morality. A strong sense of social solidarity is shown in the care taken for the cause of the poor, the fatherless and the widow, in the prohibition of usury, in the protection of the Hebrew slave and concubine, in the cities of refuge to shelter from the fury of the avenger of blood. The ethics of early Yahvism, in fact, exhibit group-morality in its typical form with its best as well as some of its worst features standing out in strong relief.

---

[1] See Montefiore, p. 42.

[2] Exodus xix. 21. Cf. Montefiore, p. 39.

[3] Amos i. 2.

[4] See the dialogue between God and Moses, Numbers xiv. 11–25. God having declared that He will smite the people, Moses replies, "Then the Egyptians shall hear it" . . . and "the nations which have heard the fame of Thee will speak, saying, Because the Lord was not able to bring this people into the land which he sware unto them, therefore he hath slain them in the wilderness."

[5] 2 Samuel xii. 31. On Yahvism as exemplified in the story of David, see Kuenen, *Religion of Israel*, vol. i. p. 326 ff.

2. Such was the religion which was transformed by the labours of the prophets from the eighth century onwards into a spiritual worship of one God, the creator and ruler of all things, the God of social justice, of mercy, and finally of love. It is not necessary for our purpose to follow the steps by which the new religious ideal was slowly and painfully acquired, with many backslidings and reversions to lower types of thought. It will be sufficient to point out the leading ideas which indicate the spirituality of the new religion. The first of these, both in point of time and perhaps in ethical significance, was the protest against the belief that sacrifice could atone for sin. This is the ever-recurring theme of the older prophets. "I hate, I despise your feasts, and I will take no delight in your solemn assemblies. Yea, though ye offer Me your burnt offerings and meal offerings, I will not accept them: neither will I regard the peace offerings of your fat beasts. . . . But let judgment roll down as waters, and righteousness as a mighty stream."[1] So writes the first of the prophetic line. Isaiah takes up the word: "To what purpose is the multitude of your sacrifices unto Me? saith the Lord: I am full of the burnt offerings of rams, and the fat of fed beasts; and I delight not in the blood of bullocks, or of lambs, or of he-goats."[2] "And when ye spread forth your hands, I will hide Mine eyes from you: yea, when ye make many prayers, I will not hear: your hands are full of blood. Wash you, make you clean; put away the evil of your doings from before Mine eyes; cease to do evil: learn to do well: seek judgment, relieve the oppressed, judge the fatherless, plead for the widow."[3] This is the first lesson of spiritual religion which finally culminates in the doctrine that God is a Spirit, and they who worship him must worship him in spirit and in truth. In the lowest stage of ethical thought men washed away their sins with magic purges or swore them off with incantation formulas. In the next stage they bargained with the gods and offered a bull or ram, or in extremity their own children to make up for their iniquity. The ethical stage proper begins when these childish things are put aside, and men conceive God as caring neither for gifts nor for ceremonial adulation, but for repentance and change of heart.

A spiritual religion must be a religion of the inner man. The ceremonies lose their magical effect. The true religious mystery is found in what passes within man's mind. "Circumcise therefore the foreskin of your heart," say the prophets and the prophetic code.[1] Yet in the older prophets it is rather social righteousness and social salvation than the justification of the individual that occupy the first place. While nearly all later religions have appealed in the first instance to the individual to come to God and save his soul, leaving social righteousness to a secondary place, the prophets, innocent as yet of any doctrine of resurrection, believing in temporal rewards and concerned above all for the fate of Israel, put matters in a different order. Their righteousness is emphatically a social righteousness. We can trace in it the protest of a just and wise conservatism against the so-called progress of a material civilization with its tendency to break down the position of the poorer free men and enslave them to the masters of wealth. The prophets' teaching was hardly yet humanitarian. It was rather an intensified form of group-morality. But it was for justice and equality, forbearance and consideration, as between all members of the group constituted as such by God's choice. It is God's people who are being oppressed. "What mean ye that ye crush My people and grind the face of the poor? saith the Lord, the Lord of Hosts."[2] The tyranny of the monopolist is already felt and denounced with a power that has never been surpassed. "Woe unto them that join house to house, that lay field to field, till there be no room, and ye be made to dwell alone in the midst of the land."[3] "The Lord will enter into judgment with the elders of His people and the princes thereof: it is ye that have eaten up the vineyard: the spoil of the poor is in your houses."[4] All the vices of material civilization, wine-bibbing and luxury, feminine vanity and ostentation, are denounced in the same strain,[5] and the women are threatened with branding instead of beauty, and instead of a stomacher a girding of sackcloth.

---

[1] Amos v. 21.

[2] Isaiah i. 11.

[3] *Loc. cit.*, 15–17. Cf. Jer. vii. 5, etc.

These were not empty denunciations. The emancipation of slaves in the sabbatical year[6] with provision to enable them to start as free men, the prohibition of usury in dealing with fellow Hebrews, the wiping out of debts in the sabbatical year, the abolition of vicarious punishment, the limitation of blood revenge, the provision for the fatherless and widows, the inculcation of humanity to slaves male and female, are embodied in the prophetic code and represent perhaps the earliest conscious effort towards systematic social reform, marred only by the exclusive religious spirit, which still (notwithstanding the concern for the stranger that is within the gates) draws a deep line between Jew and Gentile, emphasizes the necessity of exterminating the heathen, and proscribes the heretic. The heads of the code are summed up in the chapter in which Ezekiel repudiates the doctrine of vicarious responsibility.

---

[1] Deut. x. 16.

[2] Isaiah iii. 15.

[3] Isaiah v. 8.

[4] Isaiah iii. 14.

[5] *ib.* 16–26; v. 8–12.

[6] I have referred above (Part I. chap. vii.) to Jeremiah's account of the attempts to enforce this rule (Jeremiah xxxiv. 8 ff.). The writer of Isaiah lviii. 6 insists on letting the oppressed go free, presumably meaning the emancipation of slaves.

"But if a man be just, and do that which is lawful and right, and hath not eaten upon the mountains, neither hath lifted up his eyes to the idols of the house of Israel, neither hath defiled his neighbour's wife, neither hath come near to a woman in her separation; and hath not wronged any, but hath restored to the debtor his pledge, hath spoiled none by violence, hath given his bread to the hungry, and hath covered the naked with a garment; he that hath not given forth upon usury, neither hath taken any increase, that hath withdrawn his hand from iniquity, hath executed true judgment between man and man, hath walked in My statutes, and hath kept My judgments, to deal truly; he is just, he shall surely live, saith the Lord God."[1]

For a reformed and renovated Israel the prophets at first foresaw a reward of inner peace and prosperity. But as troubles thickened around them they began to feel that suffering might have a necessity and a value of its own. God's servant is "despised and rejected of men, a man of sorrows and acquainted with grief: and as one from whom men hide their face he was despised, and we esteemed him not." It is the destiny of the teacher to bear the burden of the world's folly and sin and to bear it with nothing but contempt for his reward. "Surely he hath borne our griefs, and carried our sorrows: yet we did esteem him stricken, smitten of God, and afflicted. But he was wounded for our transgressions, he was bruised for our iniquities: the chastisement of our peace was upon him; and with his stripes we are healed."[2] His methods are those of gentleness and peace. "He shall not cry, nor lift up, nor cause his voice to be heard in the street. A bruised reed shall he not break, and the smoking flax shall he not quench: he shall bring forth judgment in truth."[3] He bears his sufferings in silence and humility. "He was oppressed, yet he humbled himself and opened not his mouth; as a lamb that is led to the slaughter, and as a sheep that before her shearers is dumb; yea, he opened not his mouth."[4] Thus by a very different road and with much

[1] Ezekiel xviii. 5–9.

[2] Isaiah liii. 4, 5.

[3] Isaiah xlii. 2, 3.

[4] Isaiah liii. 7.

difference of implied meaning, we are reaching the Buddhist doctrine of renunciation and humility—those cardinal points of spiritualized religion.

Further, in proportion as Yahveh became the God of the whole earth the old group-morality was compelled to yield in a measure to Universalism. The warrior's song is changed to a prophecy of peace. "And He shall judge between the nations, and shall reprove many peoples: and they shall beat their swords into plowshares, and their spears into pruninghooks: nation shall not lift up sword against nation, neither shall they learn war any more."[1] In its cruder form the idea was that other nations should take their teaching from Jerusalem.[2] Vengeance, moreover, is still freely denounced on public enemies. "The Assyrian . . . shall flee from the sword and his young men shall become tributary."[3] The exilic writers declare that the children of Babylon shall be dashed against the stones.[4] But though national redemption and glory are still prominent we reach a higher phase in the conception of a redeemed Israel which is to evangelize the world.[5] Unfortunately, the experiences of the Exile and return were not favourable to the further development of thought along these lines, and there is a certain reaction towards exclusive particularism in the Priestly Code.[6] Judaism feared to lose itself in the great world from which it was separated by no political barrier, and it sought safety in drawing its skirts closely round it, and even avoiding all contact with the unclean. One of the noblest traits of Monotheism was thus corrupted. Universalism survived only in kindness to the stranger and in the effort to proselytize, and even this was a matter of controversy.[7] Nor was the question finally determined within the limits of Judaism itself, nor until the age of Paul.

Yet the unity and omnipresence and goodness of God are by this time established. The early prophets do not hesitate to attribute vengeance and even deceit to Yahveh. "Shall evil befall a city, and the Lord hath not done it?" Amos asks.[8] In the Deutero-Isaiah God declares that it is He who makes peace and creates evil.[9] This belongs, no doubt, to the conception of divine punishment for transgression. It is going a step further however, when Ezekiel maintains that in punishment for the idolatry of the people God gave them statutes which were not good and judgments wherein they should not live. At a later stage, on the contrary, we find the authorship of evil imputed to Satan. In the Chronicles it is he, not Yahveh, who incites David to the numbering of the people. If in this we trace the influence of Zoroastrian ideas we may recognize also an attempt to keep pure the notion of God's goodness and to separate him from all responsibility for sin and suffering. God's unity and omnipresent power are no less distinct than his righteousness. Jeremiah already puts the question, "Am I a God at hand and not a God afar off?"—a question to which more primitive worshippers would have returned a very doubtful answer. "Do I not fill heaven and earth?"[1] After the exile, though God still in some sense, symbolical or other, dwells in Sion and is certainly in a peculiar sense the God of Israel, yet there is no more talk of separation from him, whether by exile or by death. "If I climb up into heaven, Thou art there; if I go down into hell, Thou art there also." God was the creator and father of all, though all men were not yet brothers.

---

[1] Isaiah ii. 4. Dr. Carpenter informs me that the passage is now generally regarded as post-exilic.

[2] Zech. viii. 20–23.

[3] Isaiah xxxi. 8.

[4] Isaiah xiii. 16. Cf. Psalm cxxxvii. 9.

[5] Montefiore, pp. 273–277. Yet Cyrus is also God's instrument.

[6] *ib.*, p. 340.

[7] That is to say, so far as the official religion is concerned. The universalist tendency is maintained in some of the Psalms, in Jonah, and in the Wisdom literature.

[8] Amos iii. 6.

[9] Isaiah xlv. 7.

Such was the adolescence of Monotheism. We have now to deal with its full development and endeavour to measure its main contributions to ethical thought—that is to say, to the guidance of life.

3. The central idea of Ethical Monotheism admits of a short and simple statement. There is one God only, the Maker of heaven and earth. He is a Personal God, and in his personality there is a touch of kinship with our human nature. But he does not, like the gods of polytheism, differ from us merely in being greater, wiser, and more powerful. He is not—when the adolescence of monotheism is past—a mere magnified man. For man is finite and he is infinite, eternal, without beginning or end of days, the source and sustaining cause of all that is. Again, man is of composite nature and therefore corrupt. God is pure Spirit, and the spiritual is now the comprehensive expression for the highest and best that is known to man. It is defined negatively by opposition to the earthly, positively by the exaltation of morality into perfect purity of heart. God is a

---

[1] Jeremiah xxiii. 23–24. Yet, in Ezekiel's time, people remaining in Canaan still taunt the exiles with being "far from Yahveh," and boast "unto us is Yahveh's land given" (Montefiore, p. 207, citing Ezekiel xi. 15).

Spirit, and his communion with man is spiritual. They that worship him must worship him in spirit, and forms and ceremonies are naught without the inward and spiritual grace given unto us in them. As the Eternal Spirit God is the founder and sustainer of the Ethical order, he punishes the wicked and rewards the good, and yet—again except in the crassest apprehension—goodness cannot be assumed for the sake of the reward, for so it would not, spiritually considered, be goodness. What must win God is the genuine turning of the heart to him, a faith in him, which is also in the highest monotheism a love for him from whom flows love to man, and in this love is the beginning and the end of human virtue. Finally, though man's corruption separates him by a great gulf from the infinite perfection of God, yet with a mercy that equals his justice God has himself appointed means whereby the gulf may be spanned and forgiveness of sins obtained.

This comparatively simple conception in which the ethical and the religious fuse, which provides at once for the government of the universe and the entire direction of human life, expresses what religion has in essence meant to great numbers of devout souls. But the conception could not maintain itself in so simple a form. At every point it bristles with theoretical difficulties, to meet which great structures of dogma have been erected, modified, and replaced by others, as the needs of controversy have determined. Nor was the shape taken by dogma determined by the pure monotheistic idea alone, but in large measure by the particular contents of the historical documents in which the monotheistic system was revealed. We have to note the fundamental points in which the building up of dogma affected ethics.

First, as to the nature of God and his relation to the world, monotheism in all its forms appears to be agreed that he is the uncreated, unconditioned creator and sustainer of all things.

> "He is God alone!
> God the Eternal!
> He begets not and is not begotten!
> Nor is there like unto Him any one!"[1]

But for one clause this Mohammedan hymn of unity might be sung with equal fervour by the Christian. So, again, another passage—

"God, there is no God but He, the living, the self-subsistent. Slumber takes Him not, nor sleep. He is what is in the heavens and what is in the earth. Who is it that intercedes with Him, saves by His permission? He knows what is before them and what behind them, and they comprehend not aught of His knowledge but of what He pleases. His throne extends over the heavens and the earth, and it tires Him not to guard them both, for He is high and grand."[1]

---

[1] The Chapter of Unity. *The Koran*, vol. ii. chap. cxii. (Palmer's Tr.).

God is the creator and sustainer of things. But according as emphasis is laid on the one or the other of these descriptions, divergent views of his relation to the world come into being. As creator he makes the world out of nothing, and he makes man in his image. He endows his creatures with existence and they become in a manner separate from him. If pressed hard this conception militates against God's infinitude. Man and the world are separate from him, and in so far as they have independent existences must be held to limit him. He is no longer all that is. Upon this line of thought he becomes a Ruler, all-powerful, no doubt, but still an outside power acting upon this earthly existence. On the other hand, as Sustainer of all that is his relation to the world becomes more intimate. It is only in him that things have existence. His will alone is the cause of all that happens. He alone has independent existence and the things of the world exist only by participation in him.[2] This line of thought, it is clear, is bringing us close to Pantheism,[3] and though thinkers as orthodox as Thomas Aquinas have made no small advances in that direction, the centre of gravity of monotheistic dogma lies nearer to the creationist conception. God made the world, but he is not the world: He made man, but is not man. In so far his Being is limited. He is transcendent, not immanent.[4]

---

[1] *Koran*, chap. ii. (Palmer's Tr., vol. i. p. 40). These passages express God's power rather than his love and other moral qualities. But these appear in their place. Palmer finds ninety-nine epithets of God in the Koran, including The Merciful, Ruler, Holy, Peace, Faithful, Protector, Mighty, Creator, Forgiver, Provider, Knowing, Honourer, Destroyer, Hearer, Seer, Judge, Justice, Subtle, Aware, Forgiving, Exalted, Generous, Answerer of Prayer, Comprehensive, Wise, Loving, Glorious, Truth, Subsisting, Eternal, the First, the Last, Righteousness, the Relenting, Kind, Lord of Majesty and Liberality, Equitable, Patient.

[2] "Participatione ejus, qui solum per se ipsum est." Thomas, quoted in Harnack, *History of Dogma*, E. T., vol. vi. p. 184.

[3] "Theological theories have varied all the way from deism to a view little removed from pantheism" (Adams Brown, *Christian Theology in Outline*, p. 215).

[4] "Against Pantheism Christianity affirms the distinction" between God and the world (Adams Brown, *op. cit.*, p. 198). Yet God seems to be the Absolute and the Ultimate Reality (*op. cit.*, p. 122), and it is most natural to think of creation in terms of the relation between phenomena and their spiritual ground (*op. cit.*, p. 214). One cannot but ask (*a*) Are phenomena

4. So far the interest is speculative rather than ethical. Whichever view is taken, the unconditional omnipotence of God at the outset is assumed. But with this assumption the problem of evil at once becomes urgent, and we touch the very heart of all ethico-religious theory. The Platonic doctrine that God is good, and as good can be the author of no evil, may be regarded as the corner-stone of all ethical religion. How was this to be fitted in with the dogma of omnipotence which monotheism had accepted? Broadly speaking, there were two possible methods. The first was to deny the reality of evil, the second was to insist on the absolute right of the Creator to do what He would with His own. Both explanations have held an important place in dogma. According to Augustine, evil has no positive and substantial existence. It is only "a privation of good,"[1] or, by a swift change of thought, it is the dark colour that throws up the light. "For as a picture with dark colour, set in its proper place, is fair, so is the universe of things, if one can behold it, even with its sinners, though they, considered by themselves, are stained by their own ugliness."[2] It is well to remark that these two views are in essence quite opposed. In the one, evil has no positive character. It is a void, where good might be, but is not. In the other, there are things or persons that are evil in themselves—evil is so far positive; but their badness when viewed in connection with the whole scheme of things is held to have a good effect—a function to perform whereby the picture as a whole is made more fair.

The optimistic doctrine that the evil of the world is merely the dark colour which serves to show up the bright would be tenable upon two hypotheses. If evil and good were so distributed that physical suffering, external calamities and moral wrong-doing played an essential part in the growth of each personality, and could be shown to tend ultimately to its greater perfection, the existence of evil would be reconcilable with a divine justice which should take every personality into account. Equally, if personality were left wholly out of account, it might be theoretically maintainable that the unequal distribution of evil in the world was a matter of no moment, provided that the whole scheme of things be allowed to be sound at the core. The second alternative was not possible for any system which

---

real? If so, we have a dualism; (*b*) Are they an imperfect expression of the underlying Real which is God? If so, have we not Pantheism?

[1] *De Civitate Dei*, Book XI. chap. xxii.: "Cum omnino natura nulla sit malum, nomenque hoc non sit nisi privationis boni."

[2] *ib.*, chap. xxiii.

took account of personality at all. In particular, so far as regards moral evil, it was not open to Christian apologists, who, on the one hand, maintained the infinite value of the individual soul, and, on the other, visited the reprobate with the prospect of eternal punishment. Evil which involves eternal suffering as its punishment cannot be dismissed as something merely negative, nor yet accepted as a mere incident in the working out of a higher order—that is to say, it cannot be so accepted by those who maintain the inherent worth of personality. Hence theologians are driven back on a second line of defence. They admit the evil will to exist, but they seek to exonerate the Deity for responsibility for its existence. The simplest method of such exoneration is that of Pelagius, which makes the salvation of man depend upon his own choice, that choice not being conceived as predetermined by God. Free will, thus understood, however, is clearly a limitation of the divine omnipotence, and theology, Christian and Mohammedan alike, has often been driven to prefer the opposite alternative of limiting the responsibility of man rather than the knowledge and authority of God. Yet this alternative raises many problems, some of them of grave ethical import. In the first place, how does the evil will come into existence ? Augustine is clear that a good God cannot create a bad nature.[1] The nature of the wicked angels, therefore was intrinsically good,[2] and "we must believe the providence of the Creator rather than be so rash as to condemn any part of the world's fabric of any imperfection."[3] The nature of the wicked angels being good, their fall arose from their evil will. What then, we naturally ask, was the cause of this evil will, seeing that evil was not in their own nature ? The answer is that the evil will has no cause.

> "Seek the cause of this evil will and you shall find just none, for what can cause the will's evil, the will being sole cause of all evil—' Cum ipsa (voluntas) faciat opus malum '—The evil will, therefore, causes evil works, but nothing causes the evil will."[4]

But at this point we are at once brought to the free will dilemma. Either the bad will must have an origin somewhere in that structure of things which God has created, or it must be a force arising *per impossibile* out of nothing, which the Creator does not control. It may be said that he does not control it, but only permits it. This does not offer escape from the dilemma, either that it is a force arising somehow independently of him, or that his permission is a negative condition whereby alone this force can have any effect. No theory of responsibility can, from the ethical point of view, draw any serious distinction between a negative and a positive condition, and to permit evil, in the plenitude of power that might prevent it, is all one with the doing of evil. In point of fact, Augustine's own argument, when looked into, tends to restore the omnipotence of God along with his responsibility; for although he denies that the evil will has an origin, he is strenuous in maintaining that the good will is created, and here he refuses to make any distinction between the will and the being to whom the will belongs, for he argues,[1] "Seeing that the angels themselves were created, how can their wills but be so also?" It might be retorted that if this argument applies to the good angels, it applies also to the bad ones. But, further, Augustine himself is in the end led to the admission that the difference between the bad and the good will rests upon the choice of good, and the choice of good upon the grace of God. Those angels "that were created good and yet became evil by their proper will either received less grace from the divine love than they that persisted therein, or if they had equal good at their creation, the one fell by the evil wills, and the other, having further help, attained that bliss from which they were sure never to fall."[2] At this point, then, the whole argument becomes consistent, but at the cost of deliberately accepting one horn of the dilemma. The good will is good because he who exercises it has a greater measure of grace; the bad will is bad because grace does not sufficiently abound. This is in essence to abandon the conception of the bad will arising uncaused, as a force external to the providence of God, and to maintain the superintendence of God throughout; but it is also, by a logical necessity, to constitute God the ultimate author of the moral depravity of the wicked angels, and, on the same argument, of wicked man.[3] In fact, the determination to hold by the omnipotence of God at all costs led inevitably to the doctrine of predestination, for if God knows all things from the first, how can he but know the fate of those whom he is about to create or whom he may create at any future time, and if he creates them, knowing their fate, what theory of responsibility can be invented which shall take the burden of their fate off him? True, their reprobation may still be regarded as the consequence of their own wickedness. But wickedness also is foreknown by God, and though that wickedness issues from the will of each individual, yet precisely the same argument applies to the will itself; that also is foreknown and foreappointed. Thus, though by various dialectical compromises theologians may still endeavour to attribute foreknowledge of sin without responsibility for sin, the far more logical consequence is that drawn by Calvin when he declares that those "whom God passes by He reprobates, and from no other cause than His determination to exclude them."[1] And again, "I inquire again, how it came to pass that the fall of Adam, independent of any remedy, should involve so many nations with their infant children in eternal death, but because such was the will of God. . . . It is an awful decree, I confess; but no one can deny that God foreknew the future final fate of man before He created him, and that He did foreknow it because it was appointed by His own decree."[2] As to the distinction between will and permission Calvin admits that it is nugatory. "What reason shall we assign for His permitting it, but because it is His will?" Thus, the strict insistence upon the omnipotence of God led theologians, in proportion to their logical courage, to a doctrine which did not, indeed, abolish the human will, because the will was the instrument through which God worked, but which did place upon God the final responsibility for all that exists in this world and all that man does therein, and all that in consequence man shall enjoy or suffer hereafter. And this, in accordance with views held to be derived from the original revelation—though utterly repugnant to the true spirit of Christianity—involved, among other things, the eternal suffering in unspeakable torments of the vast majority of mankind, of that mankind for whose benefit in the main God was nevertheless held to have created the world.

---

[1] *De Civitate Dei*, Book XI. chap. xxii., xxiii.; Book XII. chap. i.

[2] *Op. cit.*, xii. chaps. i. and iii. "Inquantum naturæ sunt, bonæ sunt."

[3] *ib.*, Book XII. chap. iv. The free rendering of the old translator J. H. The Latin is : "rectissime credenda præcipitur providentia Conditoris ne tanti artificis opus in aliquo reprehendere vanitate humanæ temeritatis audeamus."

[4] *ib.*, Book XII. chap. vi., J. H.'s Tr. In the Latin the last words are : "malæ autem voluntatis efficiens est nihil."

---

[1] *De Civitate Dei*, Book XII. chap. ix. [2] *ib.*, Book. XII. ch. ix. J. H.'s Tr.

[3] Augustine attempts to escape from the positive character of the evil will by treating it as a deficiency in goodness (xii. 7). The want of sufficiently good will does not touch the question of responsibility. If one person's will is adequate to maintain the goodness of his nature while another person's will fails in that respect, the difference must be due to one of two causes. The want of will in the man who becomes bad is either something that arises independently without the appointment of God, or it is something which God foresees and appoints, and we are back in precisely the old dilemma.

If we would know the ethical principle by which this scheme of things can be justified, we can again turn to the logical Calvin, in whom we find the consequences most thoroughly pushed home. We merit punishment because we are corrupted by sin, and if it be replied that God has made us corrupt, the answer is that the potter has power over the vessel. And it is not a question of power alone. God is the supreme judge of the world, and the supreme judge, from whom issue all law and all right, can do no injustice. That is just, in short, which God wills, and if he determined at the outset upon the fall of man, it was because he foresaw it would tend to the justification and glory of his name.[1] With the admission that in order to understand the justice of the scheme of God we must understand him to constitute justice as suits him, we have, in point of fact, passed outside the range of human ethics. We have admitted that ethical conceptions, as we understand them, no longer apply, and Calvin himself allows that the destruction of mankind is guided by an equity indubitable, yet unknown to us. The Deity lays down an ideal code for man, but the code which men ascribe to the Deity is not ideal and can only be excused as being unintelligible to the human mind.[2] At this stage the ethical and religious elements, the blending of which was the triumph of monotheism, definitely fall asunder once more; and those who will not face this schism find themselves compelled to make some room for human responsibility, and to conceive a will which is not a mere puppet of an overruling Providence.

---

[1] Calvin, ii. 141.

[2] *ib.*, p. 147.

5. While limiting by implication the omnipotence of God, the doctrine of Free Will is not without ethical difficulties of

---

[1] Calvin, pp. 142–148.

At this point in theological development we come by a long round to the arbitrariness of the Mohammedan Deity. "God's is what is in Heaven and in the earth, and if ye show what is in your souls, or hide it, God will call you to account; and He forgives whom He will and punishes whom He will, for God is mighty over all" (*Koran*, vol. i. chap. ii. p. 45). Compare page 62, where, however, the concluding words run: "For God is forgiving and merciful." Forgiveness may be the portion of any but the idolaters, but they were created for hell. "Had God pleased they would not have associated aught with Him" (*Koran*, i. chap. vi. p. 128), *i. e.* would not have worshipped false gods. But "we have created for hell many of the ginn and of mankind. They have hearts and they discern not therewith; they have eyes and they see not therewith; they have ears and they hear not therewith; they are like cattle, nay, they go more astray; these it is who care not" (chap. vii, p. 160). These men God predestines to the fire, and the believers are not to intercede for them. But as to whether He will save all believers who avoid sin, it does not seem so clear. He is forgiving and merciful, but he is also an oriental despot in whom there remains an incalculable element of caprice.

This view, it need hardly be said, is repudiated by modern scientific theology, which substitutes for the retaliatory a disciplinary view of punishment, and tends, if a little hesitatingly, to a doctrine of ultimate universal salvation (cp. Adams Brown, *op. cit.*, pp. 293 seq.).

[2] Calvin, ii. 148.

its own. Will either is or is not an expression of character. If it is an expression of character, it figures but as one link in the endless chain of causes and effects. We may trace this chain back in the first instance to the original nature of the individual, and whether we say that this is determined by heredity or was what God made it, we are equally throwing the responsibility back on to something anterior to the individual, and on the creationist principle this something must in the end be God himself. If, on the other hand, we deny that will is an expression of character, we not only assert something which is in itself unintelligible, but we in reality destroy the very responsibility which we are seeking to maintain. For responsibility ceases when identity of character ceases. A man is justly rewarded or punished for what he has done only so far as he can recognize himself as the doer. If the "I" who did the deed is the "I" which suffers for it, well and good. But this "I" is the permanent self with its abiding character, and punishment has full ethical justification only so far as it tends to purge and ennoble the character. Thus, if the theory of Free Will means that it is not this self that does the deed, but a Will which springs out of no antecedent cause and has no fixed relation to what the "I" has been or will be, then it is not the "I"—the permanent self—that has sinned, and to punish it will be of no avail.[1] Punishment is reduced to a blind retaliation on the body which the Will possesses, and the Will itself is reduced to the condition of an animistic spirit which enters a man from without and works its will for a while with his limbs.

---

[1] Thus, the man who is punished must be essentially the same being as he who did the deed. That is to say, justice and responsibility, ethically conceived, imply the persistent identity of the personality. But this persistent identity is precisely that which the Free Will doctrine in the stage now under consideration attempts to deny. It is not the "I," the trend of continuous connection running through all my conscious life, the subject which thinks and feels and knows—it is not that "I" which acts. For this "I" has its definite character, modifiable, no doubt, by circumstances and developed by its own reaction upon circumstances, capable of being appealed to by an infinite variety of motives and often assimilating new purposes, but nevertheless always the same "I," the character of which at any given moment arises out of its previous state. It is not this "I," but a Will that acts, a Will that comes from nowhere and stands in no certain relation to me. This Will is not by the terms of the argument what "I" was before the act was done. Why, then, do "I" take the praise or bear the blame of the deed?

The doctrine of the Undetermined Will, in short, destroys the moral responsibility which it sets out to establish. Moral responsibility infers (1) continuous identity of character, and (2) the determination of action by motives adopted in accordance with the character of the agent. This implies "free will" in the sense that the agent must be unconstrained by any force outside himself, never in the sense that he is free from himself

Furthermore, on either conception of Free Will the ultimate responsibility of the Creator for evil remains. Sorrow and suffering do not begin with the Fall, or if any theologian attributes them to the sin of Adam and Eve in the spirit of the curse in Genesis, he is merely bringing us back to the doctrine of vicarious guilt. Even if all evil resulted from the wicked will of man, yet it is God who made man and gave him freedom to act as he would. Thus, though omnipotence is limited, its responsibility is not abrogated.[1] The conception of Free Will alone could not solve the difficulty. But taken in conjunction with a more rational theory of the function of punishment it has suggested a different method of approach. It was, above all, the doctrine of eternal punishment which converted the difficulties arising from God's foreknowledge and unlimited power into ethical impossibilities. This doctrine is, of course, not essential to Monotheism; it conflicts with the moral teaching of the Gospels; and with the growth of a more refined ethics it has, in fact, fallen into the background. Apologetics have then to cope with the evils, moral and physical, of this world, and their tendency would seem to be towards an "educative" conception. Free Will is higher than instinct. He only can be a morally good man who is physically and psychologically capable of being morally bad, for "ought" implies "can," and it is only

"when a soul has seen
By dint of evil that good is best,"

that it can enter into spiritual rest. In no other way could a moral order come into being, or could man be made god-like.

---

[1] The doctrine of the dependence of responsibility upon character has inherent consequences which are carefully to be marked off from those which follow from theories of creation or of the nature of causation with which it may be associated. Moral responsibility implies the dependence of action upon the self with its definite character, and, since the self does not arise out of nothing, its character, and therefore its conduct, must at the next remove be referable to the conditions out of which the self arose. Following this line of thought we are forced to conceive of Reality as a single system of which all the parts are interconnected. The argument does not imply that this interconnection is of a mechanical character. On the contrary—so far as it consists in psychical operations working intelligently towards clearly conceived ends, as is the case at least in human actions—these are the opposite of mechanical. Nor, again, does the argument imply that any intelligent being foresaw and planned the whole. If either of these creeds are held, they are held on other grounds. What the argument goes to prove is that Reality is a single system of interdependent parts. What kind of system it is must be discovered from other sources. It is only when taken in conjunction with the belief in an all-knowing and all-powerful Creator that this doctrine gives rise to the ethical difficulties of Predestination, and only when combined with a materialistic view of the universe that it destroys responsibility and renders human purposes an illusion.

As with moral evil, so with the pain and suffering inherent in the order of nature. Sorrow exists that man may learn to bear it. The happiness of childish innocence is sweet, but not so worthy as the peace won for itself by the strong soul resting upon God. To strive is the law of life, and its suffering is the pang of travail. God might create a happy paradise for children at play, but he could not, without implanting seeds of suffering, produce the nobler race of strong men to be conquerors of the earth. It seems, indeed, impossible to state this explanation except in terms which condition the creative power of God. It may be that to strive and fall, to endure suffering in ourselves and even the sight of it in those whom we love, is an unavoidable condition of moral growth, but if this is so, it is as much as to say that there are laws and conditions in the spiritual world which omnipotence itself cannot infringe. Unconditioned creation is thus in principle denied, and for an omnipotent Disposer we are compelled to substitute the evolutionary conception of a Spirit striving in the world of experience with the inherent conditions of its own growth and mastering them at the cost of all the blood that stains the pages of history, and all the unremembered tears that bedew the lone desert places of the heart.[1]

6. Amid all metaphysical difficulties monotheism remains clear as to the basis of the ethical order. God's Will is the source of moral obligation, his Word the revelation of the practical rule of life. The fulfilment of his Will is the means of salvation, and salvation is propounded as the supreme end of life towards which every thought and act must be directed. The order of ethical ideas springing from this principle has its own definite features, which must now be considered.

---

[1] Cf. Adams Brown, *op. cit.*, pp. 207–209, who, however, in fear of limiting the divine omnipotence, and rightly rejecting indeterminism, leans rather to the view that sin itself is a part of the divine plan as a means to the experience of salvation. That a limited spiritual power might be driven to this method as the only one available would be a thesis at least involving no contradiction, but that omnipotence could not achieve its ends without the tortures of Torquemada is a meaningless proposition. What, moreover, is the actual consciousness of a man who, having sinned, believes that in so doing he was fulfilling the will of God? How can he at the same time feel that he is estranged from God and requires reconciliation?

The difficulties of Theism only become contradictions when its defenders insist upon omnipotence. Yet we still find writers as open-minded as Prof. Adams Brown insisting that "There is no doctrine which is practically more important than that of the divine omnipotence" (*op. cit.*, p. 117).

God being on the one hand a perfect Being, on the other the all-powerful Lord of all, all wrong-doing takes upon itself the character of a sin against him. Sin is an act of rebellion against a supreme authority, and it stamps the soul with a stain of guilt which makes it unworthy to appear in the divine presence. Sin, in fact, borrows something of the infinitude of the Being against whom it offends and puts a measureless gulf between him and the sinner. But, in the Christian conception, man inherited from Adam—whether through the Fall or by a primæval decree of which the Fall itself was but the first consequence—an original inherent sinfulness, whereby even those of the most spotless virtue stood condemned in the sight of God. Nor could any merit of their own avail to wipe their guilt away, for, judged by the infinite excellence of the divine, no human virtue can be called positively good, and our best acts, far from yielding an overplus of merit which could, as it were, be set against our natural faults, are themselves but poor attempts to carry out that rule of sublime perfection which alone could deserve the divine approval.

In all this the religious consciousness is expressing in its own fashion an immeasurably heightened sense of the gulf between right and wrong. In so doing it sets for itself a problem which could not be solved altogether by ethical means. The Fathers of the Church, in fact, found the solution in the history of Christ, who, being at once God and perfect man, gives his own life for us. In its crudest forms this conception of Atonement implies the primitive doctrines of vicarious justice, and the transferability of guilt, both of which belong to a relatively low stage of ethical development.[1] But the conception was capable of a more refined expression, and in Anselm's hands the death of Christ appears rather as a voluntary act redounding to the glory of God, and thereby meriting a recompense which Christ, not needing it for himself, transfers to men. He makes men the "heirs" of the "superabundance of his plentitude . . . that what they owe for their sin may be remitted to them, and what, by reason of their sin, they lack, may be given to them."[2] In this treatment it is a question rather of the transfer of merit than of guilt, and this merit is not passed on mechanically (as in the semi-magical transfer of sins to the scapegoat), but only by spiritual means—to those who follow Christ according to the rules which his Church has prescribed. This reconstruction, however, refines, but does not eliminate, the vicarious principle, and leaves us with the conception of a divine retribution, not as a consequence which attaches itself by a moral necessity to the state of the sinner's soul, but as capable of being somewhat arbitrarily softened by a gracious consideration for the noble act of another.

---

[1] By the prevailing tradition down to Anselm's time it would even appear that the Atonement was held necessary as a means of satisfying the otherwise imperative claim of the Devil. See Harnack, vol. vi. p. 70 (E. T.).

[2] *ib.*, pp. 66, 67.

The death of Christ, however, does not win salvation for all men at a stroke. There are further conditions to be fulfilled. The first and greatest of these is faith in Christ himself.[1] Without faith no virtue can save, and, though they had no means of knowing the Gospel, the best of the heathen are irrevocably lost. This may be said to have been common ground to the churches down to the modern period.[2] But, further than this, faith not merely in Christ, but in the Church's own scheme of salvation is too often a necessity, and no virtue, no sanctity, not even the utmost plenitude of the true spirit of religion, could avail to make good this flaw. "For any man who does not hold the unity of the Catholic Church, neither baptism, nor alms however profuse, nor death met for the name of Christ, can be of benefit for his salvation."[1] To die for Christ has become a small thing compared with acceptance of precisely the right formula to express his relations to the Deity. The ethical consequences are double. Conduct, and not only conduct, but the whole ethical attitude of a man, his character, his soul as expressing itself in his life and in his relations to other men, fall into the second place and are subordinated to the single consideration of his attitude to the doctrines of the Church—even when that attitude can only be expressed by saying that he has never happened to hear of them. Secondly, the original universalism of the world religion disappears, and for the old circle of the fellow-citizens marked off rigidly from the rest of the world, is substituted the circle of the true believers marked off, too often, by a deeper, redder line from the rest of humanity.

---

[1] Faith in God is similarly the first condition of salvation with Mohammed. So accursed are the infidels that they do not even deserve the prayers of the faithful. "It is not for the prophet and those who believe to ask forgiveness for the idolaters, even though they be their kindred, after it has been made manifest to them that they are the fellows of hell" (*Koran*, i. chap. ix.; Palmer, p. 189). Sometimes the prophet casts his net wide. "There is no compulsion in religion; the right way has been distinguished from the wrong, and whoso disbelieves in Tâghût" (*i. e.* the idols and demons of the ancient Arabs) "and believes in God, he has got hold of the firm handle in which is no breaking off; but God both hears and knows" (*Koran*, i. chap. ii.; Palmer, p. 40). Elsewhere threats are uttered against the Christians.

[2] Calvin even detracts from the merits of the heathen: The good works of the heathen are distinguished from bad and rewarded in this life, but Augustine is right in saying, "That all who are strangers to the religion of the one true God, however they may be esteemed worthy of admiration for their reputed virtue, not only merit no reward, but are rather deserving of punishment because they contaminate the pure gifts of God with the pollution of their own hearts." They are restrained from evil not by a sincere attachment to virtue, but by ambition, self-love, or some other irregular disposition. The end of what is right is always to serve God, and as they regard not this end any externally good act performed by them becomes sin.

Luther, though of more tolerant disposition, is equally clear that outside Christendom there is no forgiveness and can be no holiness (*Primary Works*, ed. Wace and Buchheim, p. 104). The Anglican Article XIII. denies that "works done before the grace of Christ" are pleasant to God—"yea rather, for that they are not done as God hath willed and commanded them to be done, we doubt not but they have the nature of sin." This view is satisfactorily anathematized by the Council of Trent (*Corpus Juris*, p. 14).

7. But faith is not necessarily the sole condition necessary for salvation. Faith admits to the Church, membership whereof is signified by baptism. But what of the baptized Christian? Is he sanctified, "justified," once for all, or may he yet sin and fall from grace? Should he fall, what means are open to him of regaining salvation? On these questions deep cleavage came into being. The dominant view in the early Church was that while baptism washed away all previous sins, after baptism grave sins could not, unless under some exceptional circumstances, obtain forgiveness.[2] The Church itself was to be a community of saints, and down to the beginning of the third century expulsion was, in fact, the penalty for idolatry, adultery, fornication and murder.[3] But during the latter half of the second century the practice of allowing a single penance for sin began to grow up as a "second plank" of salvation for him who had made shipwreck, and from this beginning the great Catholic system of discipline was developed,[4] and the vast structure of the Canon Law. If the church was to "come down to earth" and embrace not only the saints, but the whole mass of sinful,

---

[1] Quoted from Fulgentius in the *Decr. Greg. Corpus Juris*, p. 778, where, however, it is attributed to Augustine. Augustine suggests that good works may mitigate damnation when they cannot procure salvation, and the case of schismatics who endure martyrdom is instanced (*De Patientia*, c. 26, quoted with approval by Gratian, p. 1228).

[2] Harnack, vol. i. p. 172 (E. T.).

[3] *Op. cit.*, vol. ii. pp. 108–109. The impenitent were threatened with the refusal of divine forgiveness. While exclusion was the logical consequence of the conception of a community of saints, it does not in fact seem to have been pressed home. Offenders were often dealt with in the light of a special revelation.

[4] The new system received a great impetus from the numerous lapses in the Decian persecution (*ib.*, vol. ii. pp. 110–112).

struggling humanity, it was clearly necessary to find some means of dealing with sins after baptism, and means more elastic than that of a single penance. It was essential to recognize true contrition as shown in the steadfast purpose to lead a new life. But the Church did more than recognize. It systematized it, enjoining confession as a proof of contrition, and penance not merely as an outpouring of the contrite heart, but as a means of satisfaction for the offence. The theory is somewhat crudely expressed at an early date by Cyprian, who held that no one could remain permanently without sin after baptism, that accordingly God's wrath must be appeased by sacrifices, or that sins must be expunged by exceptional works of merit, among which almsgiving takes a conspicuous place.[1] Though it is insisted that such works can only be efficacious in so far as God is pleased to accept them, it is clear that the practical working out of such a principle will bring us perilously near to a systematic money composition for sins, quite comparable to the secular composition for wrongs in early laws. The theory itself, moreover, contains the suggestion that special merits may be weighed against sins; a consideration justly applicable by a divine judge summing up upon a man's whole career, but deadly to the man himself.[2]

The requisite, but perhaps not sufficient, correction to this mechanical doctrine of satisfaction was a strong insistence on the necessity of genuine contrition as evidenced by a change of heart. This is, in fact, put forcibly by the Fathers,[3] and a full contrition remains the main essential down to the thirteenth century. Gratian is even uncertain whether confession is strictly necessary for forgiveness,[4] and he has some difficulties as to repeated confession. For the "everyday lesser and lighter sins without which one's life is not led" satisfaction is made sufficiently by the prayers of the faithful.[5] As to graver sins, Gratian is clear that they cannot be committed over and over again and still be redeemed by alms. Yet the Church allows that by penitence sins are remitted, not once, but *sæpissime*, and though perfect penitence would be final, yet there are degrees in penitence as there are in charity, and he who has repented once is cleared of his sins until he falls again.[1] In all this we see clearly enough the conflict of a stricter and a laxer view.[2] With the growth of the opinion that penance does not pre-suppose full contrition, but only an *attritio*, which the sacrament of penance itself perfects, an impetus was given to the less spiritual conception,[3] and this attained its full development in the doctrine of indulgences whereby the treasures of merit stored up by the faithful for the Church, and at her disposal, could be held to remit the penalties of guilt here and in purgatory for her obedient children.[4] We have not here to deal with the abuse of indulgences. It is sufficient for us to note how great is the departure from an ethical theory of penitence, when the Council of Trent pronounce an anathema, not merely on those who deny that the function of the priest in absolution is judicial, but on those who assert that true repentance is shown in a new life rather than in performance of penance.[5]

---

[1] Harnack, vol. ii. pp. 133, 134.

[2] Harnack's comment is not too severe. "Eine Kirche, die sich bei diesen Sätzen auf die Dauer beruhigt hätte, hätte den letzten Rest ihrer Christlichkeit sehr bald eingebüsst" (*ib.*, p. 135).

[3] Thus Ambrose, "Penitentia est et mala præterita plangere et plangenda iterum non committere" (Gratian, p. 1211). Again, "Satisfactio pænitentiæ est peccatorum causas excidere nec earum suggestionibus aditum indulgere" (attributed to Augustine, *De Dogm.*, p. 54, by Gratian, but wrongly so according to the editors). This is the change of heart, "Ubi dolor finitur, deficit et pænitentia . . . Hinc semper doleat et de dolore gaudeat" (Augustine, *De Pœnit.*, quoted *ib.*, p. 1212). This is the doctrine of lasting remorse.

[4] See the long discussion in Gratian, *Corpus Juris*, pp. 1159–1190, and compare Harnack, vol. vi. pp. 245, 246.

[5] Gratian, p. 1214.

The Indulgences led directly to the Reformation, and the abuse of "works" went far to determine the attitude of the Reformers to the whole question of Justification. The moralistic theory of nicely-graduated penalties for sin and of the cancelling out of sin against merit had ended in ethical disorder and even scandal. Luther went back to the alternative principle of salvation, and justification by faith alone is announced in statements that sometimes seem to sweep the whole ethical order aside.

"We see, then, how rich a Christian, or baptized man is, since, even if he would, he cannot lose his salvation by any sins, however great, unless he refuses to believe; for no sins whatever can condemn him but unbelief alone. All other sins, if faith in the divine promise made to the baptized man stands firm or is restored, are swallowed up in a moment through that same faith, yea, through the truth of God, because He cannot deny Himself, if thou confessest Him, and cleavest believingly to His promise; whereas contrition and confession of sins, and satisfaction for sins, and every effort that can be devised by man, will desert thee at thy need, and will make thee more miserable than ever, if thou forgettest this divine truth, and puffest thyself up in such things as these. For whatever work is wrought apart from faith in the truth of God is vanity and vexation of spirit." [1]

---

[1] *Corpus Juris*, pp. 1213–1215.

[2] Or perhaps a formalistic as against an ethical view. The rules of confession became stricter—the decretals of Gregory IX. lay down definitely that every adult must confess at least once a year (*Corpus Juris*, p. 887)—while the spiritual meaning of penitence is watered down.

[3] See Harnack, vol. vi. pp. 248 ff. (E. T.).

[4] The doctrine of indulgence as laid down by Clement VI. is a very crude statement of the transfer of merit, and the consequent cancelling of sin. "Quem quidem thesaurum non in sudario repositum, non in agro absconditum, sed per beatum Petrum . . . ejusque successores suis in terris vicariis commisit (Dei filius) fidelibus salubriter dispensandum, et propriis et rationabilibus causis nunc pro totali, nunc pro partiali remissione pœnæ temporalis pro peccatis debitæ, tam generaliter quam specialiter . . . vere pœnitentibus et confessis misericorditer applicandum" (quoted in Harnack, *op. cit.*, p. 267). This is not much above the level of the sin-eater.

[5] *Corpus Juris, Council of Trent*, p. 39.

This might seem to open the door to Antinomianism. But Luther would maintain that instead of taking morals out of religion, he had given them their true place within religion. They are not a means of grace, but a consequence of grace. "Good works do not make a good man, but a good man does good works." [2] The servile theory of reward and punishment should be banished from ethics. The Christian virtues are a free service lovingly rendered to God. "Here is the truly Christian life, here is faith really working by love, when a man applies himself with joy and love to the works of that freest servitude in which he serves others voluntarily for nought, himself abundantly satisfied in the fulness and richness of his own faith." [3] Similarly in Calvin, he who knows God "restrains himself from sin, not merely from a dread of vengeance, but because he loves and reveres God as his Father, honours and worships Him as his Lord, and, even though there were no hell, would shudder at the thought of offending Him." [4]

---

[1] Luther, *Christian Liberty*, p. 343.

[2] *ib.*, p. 275.

[3] *ib.*, p. 280.

[4] Calvin, vol. i. p. 37; cf. vol. ii. p. 52, on Christian liberty. Calvin explicitly rejects the contention that the works excluded from the scheme of justification are merely the ceremonial works of the law. Moral works go with them (vol. i. p. 595). All our best actions judged by their intrinsic merit are already defiled and polluted (p. 603), we have therefore merely to humble ourselves and submit to the divine mercy (p. 604), and our hope must be founded, not on our own regeneration, which is always imperfect, but on our being engrafted into the body of Christ and so gratuitously accounted righteous (pp. 610–611). Humility is here carried out consistently, but at the cost in the end of throwing an arbitrary choice on the Deity.

It is important that, in Calvin, regeneration does not complete itself at a stroke. Its end is the restoration of the divine image within us, which is not accomplished in a day, but by continual and sometimes tardy advances. A fraction of evil still remains within us which produces irregular desires alluring us to sin (vol. i. p. 479).

Here the ethical consciousness has regained its freedom from the bondage of a system of rewards and punishments. Yet the union of the ethical and religious is even more completely undone. It is one thing to point out that virtue ceases to be virtue when it asks for a reward. It is quite another to relegate the whole question of character and conduct to the second place. From this criticism the Counter-Reformation escaped by attempting an elaborate and extremely subtle reconciliation of faith and works, divine grace and the responsibility of the human will. Justification, the Council lays down, is by Christ alone, but only for those to whom the merit of his passion is communicated. The first step in this communication begins "A Dei per Christum Jesum præveniente gratia," by which people are called by no previously existing merits of their own to their own justification. But they must assent and freely co-operate with the grace of God, so that man is not inactive and yet could not move towards justification without God's grace. Faith is the beginning of salvation, but faith without works is dead, and neither faith nor works merit justification, nor could they confer it but for the grace of God. Grace is lost by any mortal sin, but those who fall away may be restored by aid of the sacrament of penance.

The Council proceeds to pronounce thirty-three anathemas on any one who falls away from this narrow plank of truth whether to the right or to the left. It curses—to confine ourselves to the most important points—any one who shall maintain—

(Clauses 1, 2, 3) That man can be justified by works, or by any effort of his own will, without grace. (4) That human will cannot co-operate or decline co-operation with the Divine Spirit, "sed veluti inanime quoddam nihil agere." (5 and 6) That there is no free will, but that God produces evil as well as good, "non permissive solum sed etiam proprie." (7) That all works before justification are sins. (8) That the fear of hell which restrains from sins, is a sin. (9) That justification is by faith alone. (11) That it is by remission of sins without grace and charity. (12) That justifying faith is nothing but trust in the divine mercy. (13) That personal belief in our own salvation is necessary. (17) That grace is for those predestined to life only while others are called but do not receive grace "utpote divina potestate prædestinatos ad malum." (18) That God's commandments are impossible even for the justified. (19) That there is no gospel except faith. (20) That the justified is bound not to obedience to the commands of God and the Church but only to belief. (23) That man once justified cannot sin. (24) That works do not increase justification. (25 and 26)

That the just earns no merit by good works. (27) That there is no mortal sin except unbelief. (28) That through sin faith is lost along with grace. (29) That the lapsed after baptism cannot recover grace without penance. (30) That the penitent sinner may escape temporal punishment. (31) That good works done in contemplation of an eternal reward are sins. (32) That the good works of one who is justified are gifts of God in such a sense that they are not also merits of the man himself.[1]

Here there is at least a stout attempt to reconcile divine grace and human responsibility, and to make morality along with belief essential to salvation. On the other hand, will is still second to grace—the prime mover—and conduct to belief—the preliminary condition, nor is the fundamental ethical point of the Reformers met, that moral service must be a service of perfect freedom.

8. Christianity, like Buddhism, has an elaborate theory of the basis of morals, and has applied it to the moral and spiritual education of man. It can teach, encourage, admonish, punish, forgive, and raise again to repentance and amendment of life. But in applying its principles to life, it has moved between two poles of difficulty, which are perhaps inherent in the nature of the subject. To elaborate a system of rewards and punishments is to run the risk of degrading morals into a form of spiritual calculation. The opposite alternative of declaring that conduct follows truly and naturally from the convinced faith of a Christian tends to degrade the ethical side of religion to a secondary place. On behalf of the Protestant theory it may be urged that rewards and punishments, except in so far as they are the inherent consequences of action, belong to the legal stage of ethical development. They are necessary for the maintenance of social order, but are out of place when brought into relation to moral obligation proper, and even tend to undermine the genuine ethical conception. Thus, it may be said, Protestantism, while seeming to give a less important place to ethics, was really restoring to the moral will the "freedom"—from the bondage of external sanctions—which it had lost, and so has paved the way for a distinctly ethical view. But the truth is that neither Protestantism nor the Roman Church advanced to the ethical position that it is the good man through his goodness who is nearest to God. Too intent on the doctrine of exclusive salvation, with all that it meant for the dignity and importance of their respective churches, they readily agreed upon one point,

---

[1] *Council of Trent, Corpus Juris*, 13, 14, 15.

that God was with them alone, and could see no good outside their respective bodies. And they paid the penalty of spiritual pride by marring the conception of righteousness at its source, and breaking up that union of ethics and religion which it was the special function of Monotheism to achieve and maintain. In the theories underlying both the main forms of Western Christianity that union is impaired, if not destroyed, by conceptions from which theologians have not been able to escape of the nature of God and his relation to the world and to man. Not being willing to surrender the conception of the Deity as an omnipotent Creator standing outside his world, they have been compelled, under whatever disguises, to impute to him its evil along with its goodness. To explain the history of Christ they have maintained, with whatever refinements, the doctrine of transferable merit, and in magnifying faith they have made true lovableness and beauty of character secondary in God's eyes. To this extent ethical monotheism has failed in its intention.

9. With regard to the standard, as opposed to the basis of morals, all forms of monotheism have something in common. God is the Father of all. Therefore, all men are brothers, and should be members of one Church. This potential universalism is common to Islam and Christianity, and the logic of it is so strong that it even half broke down the barriers of Jewish national exclusiveness. But in its fundamental teaching Christianity has really more affinity to Buddhism. In becoming Christian, as in becoming Buddhist, the whole moral nature of a man undergoes a change. The point of view is, as it were, reversed. The "eye of the soul" is turned in a new direction. The morals of the "natural" man, as we have seen them in development, concern the maintenance of his family, his clan, his community, his class. They are not selfish. They may impose upon him the extreme of self-denial. But they are in their most typical development the morals of the warrior—brave, loyal, proud, generous, upright, of the Greek or Roman patriot, of the modern man of honour. Sometimes they are called the morals of self-assertion. But the term is hardly just. Self-assertion was not the note of Regulus, or of the two Spartans who surrendered themselves to the Great King that they might wipe out the curse incurred by their country through its treatment of the Persian herald. It is truer to say that they are the morals of men who assert themselves, and with or through themselves their family, their caste, their country, whose very self-denial is founded on the pride of life, the

honour of a name, the glory of a tradition. As against this, the Buddhist, and still more the Christian, teaching insists on a far more thoroughgoing self-surrender. Pride is now the deadliest of the deadly sins. Through pride the angels fell. Out of the mouths of babes and sucklings God has ordained praise. He has brought down the mighty from their seat and exalted the humble and meek. He has made the foolish things of this world to confound the wise. His own Son is despised and rejected of men, and his followers rejoice, and are exceeding glad, when men persecute and revile them and say all manner of evil things against them for his sake. They give up the world, they put away the joy and pride of living. They lose their own life, and in losing they find it. They must sacrifice, not merely, as the older ethics taught them, life and home and rank and fortune for their country's good, but the very pride of race or family on which that sacrifice was based, the very idea of worldly greatness to achieve which for their city seemed the noblest duty of man. The soul must not merely sacrifice, it must surrender itself, abandon its pride, break down its barriers, and, in meekness, learn its duty. But, here the moral paradox begins, in this weakness lies its strength. Lao Tse had already taught that as water wears away the rock, so the weakest things of this world overcome the strong. This total self-surrender to the eternal truth meant a complete spiritual victory over the lords of time. The meek shall inherit the earth, not merely the heavens. Because they have humbled themselves beyond all others they are set above all others. They overcome hatred with love. They conquer by refusing to resist, and meet assault by turning the other cheek to the smiter. And beneath this yielding softness of exterior they reveal, when the right season comes, a firmness which is harder than adamant.

In the old moral order men could, with a clear conscience, be equally good haters and good lovers. It was said to them of old time, "Thou shalt love thy neighbour and hate thine enemy." But the code of self-surrender has no room for hate. Hatred is assertion, and its exercise manifests the fallacy of assertion, for its open expression is the blood feud which never ends, but remains an open wound in the vitals of society. Morally regarded, revenge is a matter of physical strength and a poor satisfaction at best. There is a nobler way of dealing with an enemy which conquers him far more effectually. "Hatred," Buddha taught, "does not cease by hatred but by love." If you are in the wrong, it is for you to make amends.

If it were he, then pity him for that he is wandering in error and blind to the truth. No doubt wrong-doing must carry its punishment. But it is not for finite intelligence to measure the guilt and assign the due penalty upon another man. "Vengeance is mine, I will repay, saith the Lord." As for us, the best of us are sinners infinitely far from the divine perfection and needing infinite mercy for ourselves. If we judge others, shall not we ourselves be judged? And if neither personal antagonisms nor moral differences are to interfere with love, still less can the barriers of class, and race, and sex be allowed to stand. We are all alike members one of another, sons of God, brothers and sisters upon earth and co-heirs of the kingdom of heaven. Among us there can be no difference of Jew or Gentile, bond or free, noble or lowly. He is most noble who the lowliest duties on himself doth lay. The fallen woman becomes a saint and the crucified thief is the first to sup with the Saviour in Paradise. The kingdom of God is not peopled by those who have proved themselves the strongest on this earth. To their Father the fate of the weakest and most despised is of no less moment than that of those who have many talents entrusted to them. The principle of Comprehensiveness—against the more exclusive view of earlier morals—is here pushed to its furthest point. Here, at least, Christian ethics at their best have been determined and consistent, and here in this resolute recognition of weakness has been their strength.[1] Nor is salvation merely a personal end which each must win for himself. It is also the duty of every good Christian to win it for his brothers. He must go out into the highways and hedges and compel them to come in. The universalism of religion, then, is not the somewhat pale and negative doctrine of equal rights on which moral philosophy insists. It imposes a no less universal standard of duty, and demands a missionary spirit on the part of its true professors. Ultimately this carries with it a demand upon society, which owes to its members, and to the outer heathen, the means of grace. Whether as expressing the claims or the duties of the individual, the doctrine of salvation may be taken as the keystone of the Christian ethics, the basis of its aggressive conquering activity, the inspiration of that wide humanity which, under the most distorted forms of human personality, recognizes the same essential soul to be saved. It enshrines a truth which modern rationalism has sometimes ignored, and it lays the foundation of an ethics which is not content with the mere regulation of relations, but sets out to conquer the world for the Spirit.

---

[1] Any one who will compare St. Paul's description of Charity, in which term the whole of the distinctively Christian ethics is summed up, with the Buddhist description of the true Brahmana, with the description of the Highminded or Great Souled man in the Ethics (book iv.), and of the Superior man in scattered passages of the Confucian Analects (see below, chap. v.), will form an idea of the relation of Christianity to other ethical systems. I take the description of the Great Souled man as typical of ordinary Greek thought, of the pagan "pride of life." The Great Souled man "deems himself worthy of great things, being in reality worthy of them." There is an honesty in his attitude to himself which is by no means to be confused with arrogance—a "proper pride" which is the alternative to the Christian humility. But for passages typical of Greek philosophy as opposed to pre-philosophic thought we must look elsewhere, *e. g.* in Aristotle himself to the description of the philosophic life (book x.), to Plato's description of the just man, and to that of the wise man in Epictetus or Marcus Aurelius.

10. Love, universal benevolence, forgiveness, humility, meekness, combined with the extreme of resolute endurance for conscience' sake—such are the necessary outcome of that emptying of self which Buddhism and Christianity alike demanded. In them the spiritual order formed for itself a new sphere detached from the more elementary morals of the ordinary good citizen. In this detachment, however, were seeds of trouble. We have already seen that the Buddhist life could hardly be lived in its perfection by the ordinary householder. The spiritual and the human had already fallen apart. In Christianity the fissure is in some respects deeper. It is in monotheism that there first arises a clear distinction between the natural and the supernatural. In the earlier phases of religion the intervention of gods and spirits was a matter of course, a thing of everyday life. But in proportion as the one God absorbs all power into himself, the course of the world comes to be thought of as running smoothly and continuously in the line which he has laid down for it, and his direct interference with its orderly movements becomes something marked and exceptional, reserved for great occasions or for the special prayers of the faithful. Thus a well-marked antithesis arises between "nature" conceived as the ordinary course of events, and the "supernatural" conceived as that which belongs directly to the sphere of God. This antithesis dominates Christian teaching from first to last, and has a profound influence upon ethics. For in proportion as nature is separated from God, that which pertains to nature is set in antithesis to that which belongs to God, and is apt accordingly to partake of the character of sin. The great institutions of humanity, marriage, fatherhood, citizenship, are things of this world. The Christian must make his account with them, but they are not of Christian origin. He is to honour the king, because he is not to concern himself with

worldly revolutions. The powers that be are ordained of God, but merely to regulate the secondary and profane affairs of this life. Christ's true kingdom is not of this world. It may be necessary for the Church in the end to come out into the world and regulate the affairs of men, for the universal benevolence taught us by Christ forbids us to be indifferent to the happiness or misery of our brother-men, and, above all, we can in no way afford to neglect their spiritual interests, to which state laws ought in future to accommodate themselves. But the emergence of the Church into affairs of this world is like the descent of Plato's philosopher into the cave. The true saint finds no joy in it. His life is not there, but hid with Christ in God. And if in the end the Church became too much a thing of this world and allowed itself to be by the world corrupted, that is but the other side of the same shield. The detachment of what was best in Christianity from the world's affairs made a Christian body unfit to rule the world's affairs. Christianity has, in fact, no theory of society by which to guide itself. Its doctrine is personal. The common life that it contemplates is a life of brotherly love, a community of saints, where all things are in common and lawsuits are not, nor any other mode of maintaining order by the strong arm. Hence, amid all the wonderful descriptions of charity, of love, of self-surrender, we hear very little of justice. Indeed, how could it be otherwise? What need of justice when love readily yields up all? Why talk of a fair division to one who, if his cloak be taken, will make that a ground for giving up his garment? What need for equal rights among men who claim nothing for themselves and yield all they have to all who want?

11. The code of the Sermon on the Mount appears to contemplate what in modern phrase we should call a voluntaryist or Anarchist community. Non-resistance is its central feature. There is to be no fighting, no revenge, no lawsuits, no oaths, no self-defence, no insistence on private property, no excessive provision for the future. If there is to be any marrying or giving in marriage at all, there is to be no divorcing of wives "save for the cause of fornication." There is to be unbounded charity without display. Altogether a life that might be lived for a while by a picked brotherhood of perfect men and women.[1] How were these rules to be made applicable to a world in which men and women are so far from perfect? In regard to the

[1] In fact, the Christian life, far from being a scheme of permanent social regeneration, was originally conceived as preparatory to an imminent millennium. There is here an important point of difference between the primitive Christian commonwealth and the Buddhist order.

general principle that law and government are necessities of human existence, the Church was helped by those passages of the Scriptures prescribing obedience to constituted authority. These sufficed as long as Christianity was the religion of a persecuted sect, but when it became the official creed of the empire a further step was necessary, and means had to be found of justifying believers in acting as judges and in executing the law upon criminals. This was done by drawing a distinction between the man and his office.[1] Even the judicial act of torture was but faintly reprobated or even justified by the Fathers.[2] The only serious doubt was as to capital punishment. This was so genuine that Augustine begs Count Marcellinus, in punishing certain Donatists who had murdered a Catholic priest, to avoid either inflicting death or mutilation.[3] For a long period Christian clerks refused to enter death sentences in so many words, and at certain periods, *e.g.* in England under the Conqueror, death sentences were wholly suspended for a time under the influence of the Church.[4] In general, punishment was to be limited by charity, and not to be embittered by the spirit of vengeance. The reproof administered to the apostles for wishing to call fire down upon the Samaritans was a warning against vindictiveness. Injuries to self should not be punished, but only those against God or our neighbour. Punishment is like a medicine, and the precept that we should love our enemies does not mean that we should relax censure, or, if in the end it is required, punishment, but that we should so carry out punishments as to reform the criminal and console the penitent.[5] These were excellent precepts, though they bore singularly little fruit, and for fifteen centuries the criminal codes of most Christian nations remained a standing reproach to civilization.

---

[1] Augustine, Epis. 154, adopted by Gratian, *Corpus Juris*, p. 932; cf. 924, "Non imputatur fidelibus qui ex officio aut tormenta exercent aut capitalem sententiam ferunt"; and see letter of Pope Innocent there quoted. Cf. Jerome, *super Hierem.*, vol. iv. p. 22 (Gratian, p. 939). "Homicidas et sacrilegos et venenarios punire non est effusio sanguinis sed legum ministerium." Cf. Gratian, 896, quoting or paraphrasing (see note *ib.*) Augustine on Psalm cviii., to the effect that retaliation, though it is hardly the part of a good man to demand it, may rightly be inflicted by the judge. "Hic enim malum pro malo redderet, judex vero non, sed delectatione justitiæ justum injusto quod est bonum pro malo," an ingenious turning of the phrase, but surely a perversion of its original meaning.

[2] See preceding note, and *Corpus Juris*, p. 936. In Ep. 159, Augustine congratulates Marcellinus on getting at the truth without the use of any torture worse than flogging, "qui modus coercionis . . . ab ipsis parentibus adhibetur, ut sæpe etiam in judiciis ab episcopis solet haberi" (Gratian, p. 929).

[3] Ep. 159. Gratian, p. 928.

[4] See Pollock and Maitland, i. 88; ii. 452.

[5] Gratian, *Corpus Juris*, pp. 909–914. Cf. also Ambrose, Sermon viii., quoted p. 915. Mercy may be unjust. We should not give unrepentant robbers the opportunity of returning to their wickedness.

Recognizing the authority of the law and the courts, the Church was also compelled to admit the oath. It should be taken not lightly, but when civil necessities so required.[1] It has been left to isolated sects, like the Society of Friends, to maintain the literal teaching of the Sermon on the Mount on this point. There remained the further question whether the law should be obeyed when in conflict with conscience or the dictates of religion. The powers that be are ordained of God, and that has led many devout Christians to a doctrine of passive obedience. The Canon Law, however, recognized that disobedience to secular authorities is often necessary, and if, possibly, it may be right "per obedientiam bonum deserere," yet it can never be lawful positively to do wrong.[2] The doctrine of non-resistance was destined to play its part as a moral support of absolutism, and it was even accepted by Calvin, though rejected with much practical effect by so many Calvinists.[3] It is manifestly appropriate only to a small community which desires to lead its own life in the midst of a great world that it can never hope to control. Hence its most practical exponent in the modern world has been the great writer who, living under the shadow of a tyranny of overwhelming power, could defy all efforts to silence him, primarily because he deprecated violence and confined the efforts of himself and his school to moral protests. Yet this same teaching, effective while the tyranny was supreme, is out of date and mischievous from the first moment at which it is shaken.

The principle of resistance admitted in the case of resort to the machinery of law, is extended to the more doubtful case of warfare. We have already traced the outline of Christian teaching on this point, and the somewhat dismal tale need not here be told again. On this side also the maintenance of the pure teaching of the Gospel has been left to small and isolated sects.

While the doctrine of non-resistance was frankly abandoned by the majority of the churches, the doctrine of communism had a somewhat different history. It is accepted in the Canons as a part of the divine law, but as abrogated by the positive law of the empire.[1] Instead of communism the Church preached abundance in charity, and on this was founded the great system of poor relief which has played so large a part in the mediæval and modern world. On this side the Christian teaching, though in a modified form, was incorporated in established institutions. But still the pure teaching of the Gospel was left to a few condemned sectaries to preserve, and was put aside by respectability as being merely that which "certain Anabaptists do falsely boast." Yet the ideal has never wholly died out, and we owe to it in our own times all the zeal and energy which Christian Socialists have thrown into the movement for reforming the conditions of industrial life. Here as elsewhere it is the few who take the Gospel literally that leave their mark upon the world.

---

[1] *Corpus Juris*, pp. 861–862.

[2] Gratian, p. 671, chap. 99. Chap. ci. is more stringent, and see chap. xci. and cxii. Even a bishop should not be obeyed if he should enjoin the singing of a mass for heretics (p. 669).

[3] *Institutes*, ii. 62, 63. However, Calvin admits that God sometimes raises up a servant as an avenger. He is also, of course, quite clear that no behest of a magistrate that is contrary to divine law must be obeyed (cf. iv. chap. xx).

12. To attempt to trace the full influence of Christian ethics on social morality is far beyond the scope of this work. It is a question of countless actions and interactions, nor are there many questions of history in which a just verdict would be so difficult to come at. Christianity, like other movements, in descending from the mount to the plain loses much of its purity, while in turn gaining something from the impulse of other movements and contact with a wider life. These actions and reactions make up a great part of the history of nineteen centuries, and to deal with them fairly would be a work for many volumes. We have, however, in the first part of this work, seen something of the workings of Christian teaching in various departments of law and morals, of its influence on marriage and the position of women, on criminal justice, on war, on slavery and class distinctions, on the practice of benevolence, on the idea of the state and its functions in social life. This influence is not one that can be summed up in a single word as good or bad, nor is it even always harmonious in itself. Naturally the different sects into which Christendom has been divided have at times worked in contrary directions in the ethical as in the theological sphere. If, for instance, we take the question of slavery, we should have to weigh the recognition of the institution by the early Church against the prohibition of the

---

[1] "Jure divino omnia sunt communia omnibus, jure vero constitutionis hoc meum illud alterius est" (Gratian, p. 12). Cf. p. 2, where the principle is referred distinctly to "natural" law. Augustine ingeniously applies it to justify the confiscations of the property of the Donatists (p. 12, note) in favour of the Catholics. No one holds any property except by human law as interpreted by the emperor. The emperor gives and the emperor may take away. There is no trace here of that divine right of property of which modern orthodoxy sometimes speaks.

enslavement of Christian prisoners and the encouragement of manumission: we should have to put the sanction of negro slavery in the sixteenth century in the one scale, and all the work of the Quakers and the Evangelical churches for its abolition in the other. If we take criminal justice, we should have to allow for the spirit of clemency which arose from the sanctity attached by the early Church to human life, and equally to admit that the religious persecutions stand as instances of what human savagery, pushed to its extreme limit, can achieve. If our example were the position of women, we should have to weigh the loss of the independence and dignity enjoyed by the Roman matron and the degradation for a long period of the ideal of marriage, against a conception of the moral and religious capabilities of womanhood which paved the way, first for charity, and ultimately for justice. In these and so many other cases "Christianity" is hardly to be distinguished from the civilization of Christendom. What is done officially, whether for good or for evil, is generally done in its name, and that cause must, indeed, be desperate, which cannot find some Biblical text or patristic saying to twist to its support. It would manifestly be unscientific to attribute corruptions of this sort to Christianity as such. On the other hand, if what is bad finds support in some distortion of religious teaching, it is equally true that the churches claim credit for much that is good with which Christianity has no special connection, and the epithet Christian is freely applied to virtues and moral principles that are far older and more universal than Christianity. Lastly, when we are taking the work of special sects into account, we must remember that their ideas, though they themselves might claim them as exclusively Christian, may be in greater or less degree inspired by the general culture of their age to which elements not distinctly Christian would contribute.

Probably we shall be safe in following the historian of the period during which Christianity superseded Paganism in attributing to Christian influence in the first place a heightened sense of the sanctity of human life. We have seen this at work in the teaching of the Church as to penal law. Mr. Lecky[1] calls attention also to the prohibition of abortion and infanticide, along with the growth of public provision for exposed children and for children of destitute parents.[2] In this relation the action of the Church was determined rather by the belief in the terrible fate awaiting unbaptized children than by humanitarian feeling in our sense of the term.[1] The suppression of gladiatorial shows is a more decisive instance of the triumph of humanity, and with this we may associate the efforts, perhaps not very strenuous efforts, of the Church to suppress private fighting. For the rest, the historian lays stress on those efforts to mitigate slavery and warfare, and to extend and systematize works of charity, to which reference has been already made. Apart from these contributions to humanitarian progress the ideals of asceticism and celibacy and the establishment of indissoluble monogamous marriage (resting, however, on the free consent of both parties) were the most noteworthy contributions of organized Christianity to the ethics of the mediæval world.

---

[1] *European Morals*, vol. ii. p. 20.

[2] *ib.*, p. 30. Constantine's law, however, provided for the enslavement of the exposed child to its protector. That was repealed for the Eastern empire by Justinian.

If, however, we take the Christian teaching, apart from all inadequacies of historical application, as a statement of an ethical ideal, and seek to measure its value as an ideal, a more decisive judgment is possible. It carries one side of ethics to the highest possible pitch of perfection, but it leaves another side comparatively neglected. The conception of a brotherhood of love based on the negation of self is demonstrably inadequate to the problem of reorganizing society and intelligently directing human efforts. Even on the personal side it is deficient, for human progress depends on the growth and perfecting of faculty, and therefore requires that provision be made for a self-development which is not selfishness but builds up a better personality on a basis of self-repression. Equally on the social side the ideal of loving self-surrender is beautiful, but not always right. Utter self-sacrifice is magnificent, but it is not justice, and justice and reciprocity are even more essential elements in any commonwealth that can survive and include average humanity within it than the readiness to resign all for the sake of others — a willingness which can hardly be made a universal rule without bringing action to a standstill. Nor does true love mean brotherly kindness and a diffused benevolence alone, but legitimately includes the whole gamut of human passions—if the lust of the eye be excepted—and a working ethical system must not suppress but provide a place for these. Applying these considerations, we can see that spiritual religion, though it recognizes personality, fails to give it full scope in all its legitimate developments. It exalts the common life, but pays little attention to the actual conditions of any social structure. It inculcates duties, but overlooks rights—a factor scarcely less essential to social progress. Finally, having found its ideal in the heavens, and invested it with supernatural authority, it leaves it to the priesthood to bring down to earth, by that method of exegesis which tends too often to practise men in the art of asserting principles without meaning them, and accepting ideals with readiness because they know how to escape the practical difficulties of their application. Self-suppression, universal brotherhood, the conquest of strength by silent endurance, these remain ideals of conduct for which every rational system of ethics must find a place, but they are not the whole of social morality, and some of them are even capable of being pressed to the point of danger. It is not merely that, humanity being what it is, the life of the Gospel could only be lived by a select community of saints. There is another side to the question. The opposition of the natural to the supernatural degrades the ordinary life of men. What is of this world belongs to the flesh, and what belongs to the flesh is of the nature of sin. In the pursuit of an ideal which few or none can realize, the element of the divine which lies in our ordinary human nature is overlooked, or rather it is denied. That the love of man and woman, of parent and child, may be a passion which can on occasion raise the most ordinary and least saint-like among us to heights of self-negation which no ascetic can surpass, is a truth to which common experience testifies. Yet supernaturalism which could paint the mystic love of the cloistered enthusiast could only conceive of sexual love as a bondage of the flesh.[1] This utter misconception of one side of human nature is only an extreme case of a general tendency. Supernatural ethics fail in that they do not recognize the ideal element in the performance of natural duty. Love of country, loyalty to comrades, devotion to truth and justice, all serve earthly and temporal ends, but are in themselves to be reckoned among the spiritual forces that guide and inspire mankind. With this interpretation of the spiritual, supernaturalism is not contented. Its service must be consciously dedicated to the glory of God. It must eliminate the passions which retain in them anything of an earthly element. It must cut the ties that bind us to this world and extirpate at the root the deadly passions that drag us into mortal sin. Hence it demands a life separated from the world, which mixes with the world from benevolence alone, but for its own part is dead to this natural existence and lives only for Christ.

---

[1] Hence in particular the condemnation of abortion (Lecky, vol. ii. p. 23).

Fortunately for the Western world supernaturalism was but one side of Christianity. Christ himself was no anchorite, and his teaching, if exacting, was also tender. There have never been wanting individuals to show the world that it was possible to follow in his steps, and live externally the ordinary life of a commonplace citizen while their souls within them are filled with their Master's teaching and overflowed in charity to all mankind. It is here, in the simple personal following of Christ, that the strength of Christianity will always lie—not in the mazes of dogmatic theology, not in the spiritual machinery for drawing souls to God, not in the teaching of the churches, not in the pomp of ceremonial, not in the fervour of the preacher, not even in the enthusiasm of the mystic who dreams of his oneness with God—not in these does Christ live, but first in the few who live as he did, shedding the light of peace around them, and next in the wider circle of those who, dwelling on the borderland dim betwixt vice and virtue, or in the twilight of conventional ideas, are irradiated now and then by a gleam from the true meaning of words with which they have been all their lives familiar, and for a while see themselves as they are and respond with some effort, however faint and short, towards the truth of things.

---

[1] For the revolting conception of womanhood held by many of the saints, see Lecky, *History of European Morals*, vol. ii. pp. 116 seq.

CHAPTER V

ETHICAL IDEALISM

1. THE preceding chapters have illustrated the close connection between ethical and religious ideas. We have, in fact, seen ethics, upon the whole, in a position of dependence and subordination. But we have now to deal with more independent forms of ethical thinking. In barbaric society, indeed, reflection of this kind occupies no very important place; it hardly goes beyond some of those proverbial maxims of conduct which form the simple worldly wisdom of uncultivated peoples all the world over. In the early civilizations we find this proverbial philosophy acquiring a somewhat fuller development as exemplified in the seven sages of ancient Greece and the gnomic poetry which belongs to the same period. We have already mentioned certain regular treatises on practical morals which are a feature of ancient Egyptian literature. Writings of this kind are not without their value for the historical student, precisely because they do little more than formulate the current ideas of the age to which they belong. Indeed, the whole race of proverbial moralists through the four thousand years that separate Ptah-Hotep and Martin Tupper are apt to degenerate into platitudinists. They utter irreproachable sentiments—sentiments, at least, irreproachable according to the standard of their own times—but we can hardly think that even in their own day men rose from the perusal of them with any deep feeling of gratitude for heightened insight into the laws of conduct or the relations of man to man. In them the ethical ideal is not yet born; they take the traditional morality and formulate it into neat and general statements.

It is far otherwise with the class of thinkers with whom we have now to deal. We have seen in the history of religion a stage at which the divine (which at first is lower, and for long ages is at least no higher, than the human) becomes idealized, and there arises a conception of a spiritual being which is an embodiment of all that man can dream of perfection. This is one way in which an ideal dawns upon humanity. The other way is through reflection upon life and man's place in it, upon human nature and its potentialities, upon human action and its ends. Following this road, thought proceeds by the deliberate examination of human experience, and seeks thereby to determine where man's true purpose lies. By this method, with little or no reference to supernatural sanctions or even to divine commands, it may make for itself an ideal of conduct, to which it calls man to conform simply because such conduct is best for himself and for humanity. In such a method we have the beginning of an ethical system conceived as the basis of a conscious ordering of human life by the deliberate efforts of the best and wisest members of the human race; and we have now to trace briefly the development of this ideal, and to indicate the phases which it has assumed and the function which it has performed in different civilizations.

2. Between the sixth and the fourth centuries before Christ schools of thought following this method arose in two distant parts of the world—in China and in Greece. The Chinese thinkers founded a great system which from that day to this, in spite of the efforts of the reactionary dynasty which destroyed the classical books and prohibited their teaching, has guided the destiny of what was, down almost to our own times, by far the greatest empire of the world in point of population. It has supplied the rule of life for the governing classes and maintained the essence of Chinese culture intact through, and in spite of, successive irruptions of semi-barbarous conquerors; and may thus, so far as its practical influence is concerned, fairly claim respect as one of the greatest and most influential doctrines of ethical conduct which the world has known. What, then, were the leading doctrines of the founder of this influential school?

The first principle of an ethical idealism, which is to rise above the common morality of custom and to depend on its own excellence rather than upon any religious sanction to recommend it to mankind, must from the nature of the case lay down that, for the individual, virtue is its own reward. It is this which distinguishes the ethical from the supernatural view of morals on the one hand and the materialistic or prudential on the other. This principle is constantly insisted upon by Confucius: "I have not seen a person who loved virtue or one who hated what is not virtuous. He who loved virtue would esteem nothing above it; he who hated what is not virtuous would practise virtue in such a way that he would not allow anything that was not virtuous to approach his person."[1] The sage whose conscience is clear and who knows that his dealings are upright can fear no punishment from the powers of this world. "Heaven has produced the virtue that is in me. Hwan-T'uy—what can he do to me?"[1] And again: "The determined scholar and the master of virtue will not seek to live at the expense of injuring their virtue. They will even sacrifice their lives to preserve their virtue complete."[2] Every man is master of himself, and thus, as the Western Stoic taught, has a sovereignty which no one but himself can take from him. "The commander of the forces of a large state may be carried off, but the will of even a common man cannot be taken from him."[3] The sage is not made of adamant nor is he wholly unaffected by fortune and misfortune, but he shows his strength by rising superior to calamity. "With coarse rice to eat, with water to drink, and my bended arm for a pillow, I still have joy in the midst of these things."[4] Even the desire of posthumous fame must be banished from the mind. It is true that by a very human weakness the superior man dislikes the thought of his name not being mentioned after his death,[5] but this motive is rejected as unworthy. "To live in obscurity and yet practise wonders in order to be mentioned with honour in future ages, this is what I do not do."[6] Nor is there any hint of a divine reward. The current doctrine of universal animism is not indeed explicitly rejected by Confucius, but he nowhere appeals to the benefits to be gained from the cult of spiritual beings, but, on the contrary, warns his followers to have as little to do with them as possible, and devote themselves instead to their duty towards their neighbours. "To give oneself earnestly to the duties due to men and, while respecting spiritual beings, to keep aloof from them, may be called wisdom."[7] Nor does Confucius encourage thinking about the future life. Ke Loo asked about serving the spirits of the dead. The Master said, "While you are not able to serve men, how can you serve their spirits?" Ke Loo added, "I venture to ask about death." He was answered, "While you do not know life, how can you know about death?"[8] Only the consciousness that the Supreme spiritual being who inhabits heaven knows him through and through remains a consolation. "Alas! there is no one that knows me. . . . But there is heaven;—that knows me."[9] And the appointment of heaven is frequently recognized and used as a ground for ignoring the littleness of men and the obstinacy of rulers. "If my principles are to advance, it is so ordered. If they are to fall to the ground, it is so ordered. What can the Kung-pih-Leaou do, where such ordering is concerned?"[1] Fortified by the favour of heaven, the superior man rises above all ordinary human weaknesses and is completely master of himself. "The way of the superior man is threefold. . . . Virtuous, he is free from anxieties; wise, he is free from perplexities; bold, he is free from fear."[2] Upon the whole, Stoicism itself has hardly drawn a bolder picture of the self-poised, self-mastering personality, lord of his own bosom and therefore of all things that affect him. But as with Stoicism, so with Confucius, this self-mastery is founded upon nature, and manifests itself in conformity to the rules of social life, in the execution of justice and the practice of benevolence. "The doctrine of our master," said Tsang, "is to be true to the principles of our nature and the benevolent exercise of them to others—this, and nothing more."[3] Similarly, the Master said, "Man is born to uprightness. If a man lose his uprightness and yet live, his escape from death is the effect of mere good fortune."[4] This nature is conceived as common to all men, the differences that arise being due to their own conduct. "By nature, men are nearly alike; by practice, they get to be wide apart."[5] Nor is virtue to be found in deserting the common life and going out into the wilderness to seek for occasions on which to manifest one's superiority. "The path is not far from man. When men try to pursue a course which is not far from the common indications of conscience, this course cannot be considered The Path."[6] But instruction is often essential. Knowledge of duties may be inborn, acquired by study, or after a painful feeling of ignorance. They may come with natural ease, from a desire for their advantages, or by strenuous effort.[7] The only distinctions which the teacher claims for himself are, first, that his efforts towards perfect virtue, though never successful, are constant and unceasing—the Master does not rank himself with the sage and the man of perfect virtue, but strives without satiety to become such[8]—secondly, that he passes his life in learning. "In a hamlet of ten families there may be found one honourable and sincere as I am, but not so fond of learning."[1] That is to say, the fundamental moral qualities are widely diffused, but not the intellectual attainments which direct them. On the other hand, mere customary morality is sweepingly condemned, and here breathes the true spirit of ethical idealism. "Your good, careful people of the villages are the thieves of virtue"[2]—a text which is ably commented upon by the greatest of Confucians—

---

[1] Legge, *Confucian Analects*, Book IV. chap. vi. sec. 1.

---

[1] Legge, *Confucian Analects*, Book IV. chap. vii. sec. 22.

[2] *ib.*, Book XV. chap. viii.

[3] *ib.*, Book IX. chap. xxv.

[4] *ib.*, Book VII. chap. xv.

[5] *ib.*, Book XV. chap. xix.

[6] *The Doctrine of the Mean*, chap. xi.

[7] *Analects*, Book VI. chap. xx.

[8] *ib.*, Book XI. chap. xi.

[9] *ib.*, Book XIV. chap. xxxvii.

---

[1] *Analects*, Book XIV. chap. xxxviii.

[2] *ib.*, Book XIV. chap. xxx.

[3] *ib.*, Book IV. chap. xv.

[4] *ib.*, Book VI. chap. xvii.

[5] *ib.*, Book XVII. chap. ii.

[6] *Doctrine of the Mean*, chap. xiii. sec. 1.

[7] *ib.*, chap. xx. sec. 9.

[8] *Analects*, Book VII. chap. xxxii. and xxxiii.

> "Wan Chang said, 'Their whole village styles those men good and careful. In all their conduct they are so. How was it that Confucius considered them the thieves of virtue?'
>
> "Mencius replied, 'If you would blame them, you find nothing to allege. If you would criticize them, you have nothing to criticize. They agree with the current customs. They consent with an impure age. Their principles have a semblance of right-heartedness and truth. Their conduct has a semblance of disinterestedness and purity. All men are pleased with them, and they think themselves right, so that it is impossible to proceed with them to the principles of Yaou and Shun. On this account they are called "The thieves of virtue."'
>
> "Confucius said, 'I hate a semblance which is not the reality. I hate the darnel, lest it be confounded with the corn. I hate glib-tonguedness, lest it be confounded with righteousness. I hate sharpness of tongue, lest it be confounded with sincerity. I hate the music of Ch'ing, lest it be confounded with the true music. I hate the reddish-blue, lest it be confounded with vermilion. I hate your good, careful men of the villages, lest they be confounded with the truly virtuous.'"[3]

The basis of morals, then, is the intrinsic desirability of a great ideal which accords with the true principles of man's nature when brought to their due development by proper education. To such an ideal man must hold fast in spite of all that fortune or his fellow-men can do to him, and that will be best for him in that he so remains lord of himself. In so doing he keeps the appointment of heaven, yet his reward is nothing external to the act itself, but consists merely in the high desirability of the life lived in accordance with the best principles that are in one.

3. In what outward conduct does this ideal show itself? Generally speaking, in the conduct of the good citizen, the dutiful son, the kindly neighbour and, in particular, the upright official who would resist to the death the corrupt tyrant. Uprightness

---

[1] *Analects*, Book V. chap. xxvii. [2] *ib.*, Book XVII. chap. xiii.

[3] Mencius, Book VII. part ii. chap. xxxvii. secs. 10, 11, 12.

and benevolence are the two master-words. Confucius accepted and re-constituted the traditional standard of Chinese ethics with its closely linked family ties and its patriarchal relations of ruler and subject. He calls himself a transmitter and not a maker, believing in and loving the Ancients.[1] Hence he insists repeatedly upon a conception of filial devotion which to the Western mind appears exaggerated. He finds the standard of conduct frequently in those rules of propriety which belong to ancient tradition, and prescribe the requisite term of mourning for the cult of the dead, the due order of precedence among relations, a ceremonial etiquette as between the prince and his officers, and so forth. In the Book of Rites he is, generally speaking, moderate and reasonable in his interpretation of customary rules;[2] but, considering the incubus which the cult of the dead has imposed upon industrial life in China, it is to be regretted that he did not apply himself more resolutely to inquiring into the grounds of custom, and teaching men that its authority rests only upon its value in the social life of mankind. He is very clear that the requirements of virtue are not satisfied by mere outward conformity. In mourning, for instance, the feeling of grief was a far more essential matter than the form in which it was expressed,[3] and again, outward conformity to law may be secured by punishment, but this is not a moral education of the people, but, on the contrary, a corrupt influence. "If the people be led by laws and uniformity sought to be given them by punishments, they will try to avoid the punishment but have no sense of shame; if they be led by virtue, and uniformity sought to be given them by the rules of propriety, they will have the sense of shame, and moreover will become good."[4]

Confucius, therefore, held by tradition, and advanced no reasoned theory of the rules of conduct. Yet certain fundamentals appear. Virtue must come from the good will. While the "rules of propriety" generally supply the detail, the broad principles of conduct are those which follow from the conception of oneself as the servant of mankind, and of social happiness as the supreme end of endeavour for the individual. For example, we are told that Tsze-ch'an had four of the characteristics of the superior man; "in his conduct of himself he was humble, in serving his superiors he was respectful, in nourishing the people he was kind, in ordering the people he was just."[5] Again, perfect virtue is "when you go abroad to behave to every one as if you were receiving a great guest; to employ the people as if you were assisting at a great sacrifice; not to do to others as you would not wish done to yourself; to have no murmuring against you in the country and none in the family."[1] The virtues of the sage are acquired for the happiness of the world at large. "Tsze-loo asked what constituted the superior man." The Master said, "The cultivation of himself in reverential carefulness." "And is this all?" said Tsze-loo. "He cultivates himself so as to give rest to others." . . . "Is this all?" asked Tsze-loo. The Master said, "He cultivates himself so as to give rest to all the people."[2] In the practice of benevolence the family relations come first. Benevolence is the characteristic element of humanity and the great exercise of it is in loving relations. Righteousness is the acting in accordance with what is right and the great exercise of it is in honouring the worthy. The decreasing measures of the love due to relatives and the steps in the honour due to the worthy are produced by the principles of propriety.[3] Indeed, Confucius's simple and somewhat elementary political philosophy rests on his conception of the family as the type and exemplar of the state. "There is filial piety, therewith the sovereign should be served; there is fraternal submission, therewith the elders and superiors should be served; there is kindness, therewith the multitude should be treated."[4] Thus, the Confucian rule of benevolence is not a mere abstract principle, but one regulated in its application by well-understood duties depending on a man's position in his family or in the state. It is moreover always conceived in close connection with justice. The "golden rule" to treat others as we would have them treat us, which Confucius was the first to formulate, is as much a matter of justice as of benevolence. It is a rule of impartiality as between self and others. Tsze-kung asked, "Is there one word which may serve as a rule of practice for all one's life?" The Master said, "Is not reciprocity such a word? What you do not want done to yourself do not do to others."[5] Benevolence, indeed, should be universal,[6] but there must be a rule of justice in applying it. We should forgive injuries, but we should not push that principle to the point of treating the evil and the good alike. The philosopher Lao Tse had urged that instead of returning evil for evil we should recompense evil with kindness. Being asked what he thought of this principle, the Master said, "With what, then, will you recompense kindness? Recompense injury with justice and recompense kindness with kindness."[1] But this is not to be taken as justifying vengeance. "To show forbearance and gentleness in teaching others and not to revenge unreasonable conduct, this is the forcefulness of Southern regions and the good man makes it his study."[2]

---

[1] *Analects*, Book VII. chap. i.

[2] De Groot, ii. 662, etc.

[3] *Analects*, Book III. chap. iv.

[4] *ib.*, Book II. chap. iii.

[5] *ib.*, Book V. chap. xv.

---

[1] *Analects*, Book XII. chap. ii.

[2] *ib.*, Book XIV. chap. xlv.

[3] *Doctrine of the Mean*, chap. xx. sec. 5.

[4] *The Great Learning*, chap. ix.

[5] *Analects*, Book XV. chap. xxiii.

[6] *ib.*, Book XII. chap. xxii.

Such then, in brief, is the code of private life. To live in the service of mankind, to respect parents and superiors, to be kind and helpful to those in need, to have no enemies, to forbear with the offender and forgive him within the limits of justice, to be prepared to love all men, to hate only those who slander others and thrust themselves forward against all social tradition,[3] to serve a good ruler but withstand him to his face if he is bad, to undergo privation and, if necessary, death for a moral principle, to be grieved and feel pity for the criminal instead of triumphing over him,[4] not to withdraw from the world, to realize that man's life is to be lived in the midst of humanity whatever the difficulties and drawbacks may be, and in all these things to recognize that the beginning and the end is sincerity[5]—such is the ideal of personal conduct that Confucius taught to China.

The ideal of public conduct is like unto it. In fact, throughout Confucius is talking with officials, addressing men who hold office and who are concerned with the problems of conscience arising in connection with the tenure of office, with the duties of the king and the relation of king and officer. Throughout he insists upon the duty of prince to people. The relationship should be that of father to children. The first duty of the prince is to order his own conduct aright, and to show in his own household those principles of family life upon which the structure of Chinese society was held to depend; from his example outwards the influence would radiate. When Ke-K'ang asked about government Confucius replied, "To govern means to rectify. If you lead on the people with correctness who will dare not to be correct?"[6] And when Ke-K'ang was distressed by the number of thieves, Confucius replied with much directness, "If you, Sir, were not covetous, although you should reward them to do it they would not steal."[7] The people are by nature disposed to virtue; they break out into mutiny only in times of distress. The duty of the prince is to keep down taxation, avoid harsh punishments and excessive forced labour.[1] When the people are numerous what next is to be done for them? The answer is, "Enrich them." "And when they have been enriched?" "Teach them."[2] The virtuous and wise prince is able to dispense with punishment. "Sir, in carrying on your government why should you use killing at all? Let your evinced desires be for what is good and the people will be good. . . . The grass must bend when the wind blows over it."[3] A succession of good governors lasting over a century would be able to transform the violently bad and dispense with capital punishment.[4] In accordance with the doctrine of universal benevolence the people are the first object in the state. The king is their servant, and that sovereign is most praised who takes upon himself the sins of the people and is responsible for them to heaven.[5] We have here, in short, a theory of conduct which is at the same time a theory of society, elementary no doubt, especially in its political aspect, yet the foundation of that cultivated class which has for two thousand years governed China and kept Chinese civilization erect through all its vicissitudes.

---

[1] *Analects*, Book XIV. chap. xxxvi.

[2] *Doctrine of the Mean*, chap. x.

[3] *Analects*, Book XVII. chap. xxiv.

[4] *ib.*, Book XIX. chap. xix.

[5] *Doctrine of the Mean*, chap. xxv.

[6] *Analects*, Book XII. chap. xvii.

[7] *ib.*, Book XII. chap. xviii.

4. The teaching of Confucius was further developed by the greatest disciple of his school, the philosopher Mencius (371–288 B.C.). Mencius made no entirely new departure, but put the moral theory of Confucius in a more systematic form, stated many of the Master's fundamental positions with a vigour and incisiveness that were entirely his own, and laid special stress on certain sides of political morality, such as the inherent wickedness of militarism, and the right of rebellion against a vicious sovereign. With him again virtue is the supreme end of life. Perfect uprightness alone casteth out fear. He attributes to "the Master" a saying, "If on self-examination I find that I am not upright, shall I not be in fear even of a poor man in his loose garments of hair-cloth? If on self-examination I find that I am upright, I will go forward against thousands and tens of thousands."[6] He who knows his own nature, knows heaven, and "to preserve one's mental constitution and nourish one's nature is the way to serve Heaven."[7] Heaven has its appointments which we should accept instinctively, but this is not to lead us into fatalism.

---

[1] Cf. *Doctrine of the Mean*, chap. xx. 14.

[2] *Analects*, Book XIII. chap. ix.

[3] *ib.*, Book XII. chap. xix.

[4] *ib.*, Book XIII. chap. xi.

[5] *ib.*, Book XX. chap. i. sec. 3.

[6] Mencius, Book II. part i. chap. ii. sec. 7.

[7] *ib.*, Book VII. part i. chap. i

"He who has the true idea of what is heaven's appointment will not stand beneath a precipitous wall.

"Death sustained in the discharge of one's duties may correctly be ascribed to the appointment of heaven.

"Death under handcuffs and fetters cannot correctly be so ascribed."[1]

The other elements of happiness depend on virtue. Being asked by King Hwuy whether wise and good princes find pleasure in geese and deer, Mencius replied, "Being wise and good they have pleasure in these things. If they are not wise and good, though they have these things, they do not find pleasure."[2]

"To dwell in the wide house of the world, to stand in the correct seat of the world, and to walk in the great path of the world; when he obtains his desire for office, to practise his principles for the good of the people; and when that desire is disappointed, to practise them alone; to be above the power of riches and honours to make dissipated, of poverty and mean condition to make swerve from principle, and of power and force to make bend,"[3] such in a few words are the life and character of the great man. His principles allow of no compromise. "Never has a man who has bent himself been able to make others straight."[4]

5. Man must be lord of himself. But in the pursuit of virtue he is doing no violence to himself. He is merely fulfilling, bringing to the perfection of development the seeds of good implanted in him by nature. Here the teaching of Mencius is more distinct than that of his master, and contains the germs of a scientific theory of moral psychology. The foundation of virtue is in the "passion-nature" which occupies a position in the soul somewhat analogous to that of the *θυμοειδές* in Plato's scheme. The "passion-nature" needs guidance and its natural leader is the will,[5] directed as we collect from other passages by education and the "rules of propriety." But this will must lead and not force, just as the ruler should not subdue men by violence but win their hearts by virtue. Or, in a different metaphor, the "passion-nature" must be weeded, not pulled up.[6] For the feelings are the foundation of the virtues. "The feeling of commiseration is the principle of benevolence. The feeling of shame and dislike is the principle of righteousness. The feeling of modesty and complaisance is the principle of

---

[1] Mencius, Book VII. part i. chap. ii.

[2] *ib.*, Book I. part i. chap. ii. sec. 2.

[3] *ib.*, Book III. part ii. chap. 2. sec. 3.

[4] *ib.*, Book III. part ii. chap. i. sec. 5.

[5] *ib.*, Book II. part i. chap. ii.

[6] *ib.*, Book II. part i. chap. ii. sec. 16.

propriety. The feeling of approving and disapproving is the principle of knowledge. Men have these four principles as they have their four limbs," and those who say they cannot develop them play the thief with themselves.[1] "All men have a mind which cannot bear to see the sufferings of others."[2] "Even nowadays," if we saw a child about to fall into a well, we should experience alarm and distress, not from any desire for the favour of its parents, nor from any love of praise, but because commiseration is essential to man.[3] Only as we saw above[4] in the story of King Seuen, it is the misery that we see that affects us, and our imaginations are not vivid enough to make us feel the pain that we do not see. What is needed is development of the good material that is in man. Let the four principles "have their complete development and they will suffice to love and protect all within the four seas. Let them be denied that development and they will not suffice for a man to serve his parents with."[5] These principles are not infused into us from without. "Seek and you will find them. Neglect and you will lose them."[6] But men differ much in the cultivation of them, and what is needed is to work on the basis of good which exists in all and extend it[1] so as to cover the whole of life and achieve that universal benevolence which is "the most honourable dignity conferred by Heaven."[2]

---

[1] Mencius, Book II. part i. chap. vi.

[2] *ib.*, Book II. part i. chap. vi.

[3] *Loc. cit.*

[4] Part I. chap. vi.

[5] Book II. part i. chap. ii. Elsewhere (Book VI. part i. chap. i.) a dialogue occurs between Mencius and Kaou, which Kaou begins by suggesting that righteousness is to man's nature as a cup to willow wood. Mencius objects that this implies that violence must be done to humanity to convert it to righteousness. Kaou then compares human nature to water, which flows east or west according as a channel is opened for it. Mencius replies that "the tendency of man's nature to good is like the tendency of water to flow downwards." Kaou then draws a distinction between Righteousness as external and Benevolence as internal. I honour an old man not because there is a principle of reverence in men, but just as when I see a white man I consider him white. Kaou is here taking up a position somewhat analogous to that of the "moral sense" school. Mencius's reply is to the effect that whiteness is a quality common to a man and a horse. We do not honour an aged horse; nor is there any righteousness in the age of a man, but in our honouring it (*i. e.* righteousness is not a perceptible quality of things, but lies in a relation of ourselves to other persons). Kaou then says that he loves his younger brother, but not the younger brother of a man of Tsin—the feeling is therefore determined by himself, internal (subjective). On the other hand, he honours an old man whether of his own people or of Ts'oo. Therefore this (a point of righteousness) is external. Mencius replies that we enjoy roast meat, whether roasted by ourselves or men of Tsin. Would Kaou say that our enjoyment of roast meat is external? The discussion is as interesting as the examples are quaint. Kaou is contending for the objectivity of the moral standard as contrasted with the subjective variations of good feeling; Mencius for the subjectivity of all morals, in the sense that they proceed from and rest on human nature. The solution is perhaps to be found in the Kantian distinction between subjective as = the necessary laws of a subject, *i. e.* of a rational being, and as = the individual variations which make up a man's idiosyncrasies.

[6] Mencius, Book VI. part i. chap. vi. sec. 7.

Benevolence and righteousness are the leading notes of the character that is fully developed. Not indeed that benevolence should be equally apportioned to all men. Natural ties have their place. The philosopher Mih taught that we should love all equally, which is contrary to filial duty, but "To acknowledge neither king nor father is to be in the state of a beast."[3]

---

[1] "All men have some things which they cannot bear; extend that feeling to what they can bear, and benevolence will be the result. All men have some things which they will not do; extend that feeling to the things which they do, and righteousness will be the result.

"If a man can give full development to the feeling which makes him shrink from injuring others, his benevolence will be more than can be called into practice. If he can give full development to the feeling which refuses to break through or jump over a wall, his righteousness will be more than can be called into practice.

"If he can give full development to the real feeling of dislike with which he receives the salutation, 'Thou,' 'Thou,' he will act righteously in all places and circumstances" (Book VII. part ii. chap. 31, secs. 1–3).

In more modern phrase, one might say that every man "has his code." In that code lie concealed impulses which, adequately developed, would furnish a perfect character. By it are inferred principles which, consistently carried out, would suffice for a saint. Thieves' honour recognizes a principle which the thief applies only to his fellow-thieves. If he applies it without any such arbitrary restrictions, he must become an honest man.

[2] Book II. part i. chap. vii. sec. 2.

[3] Mencius, Book III. part ii. chap. ix. sec. 9. Mih's expression of the doctrine of universal benevolence was of the most sweeping kind. "It is this principle of making distinctions between man and man which gives rise to all that is most injurious in the empire" (Legge, ii., Prolegomena, p. 111). Mih seeks to turn the objection that the doctrine is contrary to filial piety by urging that by loving and serving others a man will obtain their love and benefits for his parents (*ib.*, pp. 105–119). Mih's practical polemic was directed against the excessive burden thrown on Chinese life by the laws of mourning, and the classical philosophy, as De Groot's account clearly shows, erred by adhering too closely to the traditional observance.

Mencius follows closely the typical Chinese view in the extension of the principle of filial piety to cover all forms of wrong-doing that might indirectly injure parents, and in exalting it to the disparagement of duties to wife and child. Thus he enumerates five common things which are unfilial. 1. Laziness. 2. Gambling, chess-playing and wine-bibbing. 3. Love of money and selfish attachment to wife and child—these three when followed to the point of neglect of parents. 4. Following the desire of eyes and ears so as to bring parents into disgrace. 5. Being fond of bravery, fighting and quarrelling so as to endanger parents (Book IV. part ii. chap. xxx.). He holds up for imitation the example of Chang, who, because his father was offended, sent away his wife and child, and all his life received no cherishing attention from them (*ib.*, sec. 5). There is, of course, another point of view—that of Chang's wife and child and the attention that they might expect. The Western world puts them first, the Chinese second *longo intervallo.*

Human excellence lies in the performance of the social duties. The life of the hermit is like that of an earth-worm.[1] The sage learns humbly from others. "When any one told Tsze-loo that he had a fault, he rejoiced," and Shun "regarded virtue as the common property of himself and others, giving up his own way to follow that of others, and delighting to learn from others to practice what was good."[2] Though it is the duty of the sage to teach as well as learn, yet there is a pitfall here. "The evil of men is that they like to be teachers of others."[3] As to the conventions, Mencius holds by the "rules of propriety," but sometimes not without symptoms of impatience. A stickler for strict rule would not a touch a woman's hand even to save her from drowning. Such a man, says Mencius curtly, is a "wolf."[4] The intrinsic importance of the rule must be taken into account, and also the urgency of the motive for casting it aside.[5] Had this principle been developed, it would have broken the crust of Chinese formalism and opened the way for a richness of spiritual growth which, crusted over by tradition as it has been from the first, Confucianism has never brought forth.

6. But it is in its political applications that the ethical teaching of Mencius is most thoroughgoing. Here the principles of justice and benevolence require that the welfare of the people should be the first consideration of government. "The people are the most important element in a nation, the spirits of the land and grain are the next, the sovereign is the lightest."[6] The people's will practically expressed in unanimous support of, or aversion to, a ruler is of divine authority. "Heaven sees according as my people see: Heaven hears according as my people hear."[7] The king must care for their prosperity. He should refrain from interfering with husbandry, spare the growing trees and the young fish, plant mulberry-trees about the homesteads and inculcate filial and paternal duties in the schools. A ruler so governing his state would certainly become emperor. Instead of this he says severely to a prince—

"Your dogs and swine eat the food of men, and you do not know to make any restrictive arrangements. There are people dying from famine on the roads, and you do not know to issue the stores of your granaries for them. When people die, you say, 'It is not owing to me; it is owing to the year.' In what does this differ from stabbing a man and killing him, and then saying, 'It was not I; it was the weapon'? Let your Majesty cease to lay the blame on the year, and instantly from all the empire the people will come to you. . . .

---

[1] Book III. part ii. chap. x. [2] Book II. part i. chap. viii.
[3] Book IV. part i. chap. xxiii.
[4] *ib.*, chap. xvii. Cf. Douglas, *Society in China*, p. 189.
[5] Book VI. part ii. chap. i. [6] Mencius, Book VII. part ii. chap. xiv.
[7] Book V. part i. chap. v. sec. 8.

"In your kitchen there is fat meat; in your stables there are fat horses. But your people have the look of hunger, and on the wilds there are those who have died of famine. This is leading on beasts to devour men."[1]

Lighter taxation, care for the poor and childless, the punishment of corrupt officials, moderation in punishments avoiding the principle of collective responsibility, attention to works of public necessity, and, above all, aversion to warfare, were the marks of the good ruler. In the good old days of King Wan—

> "The husbandmen cultivated for the government one-ninth of the land; the descendants of officers were salaried; at the passes and in the markets strangers were inspected, but goods were not taxed; there were no prohibitions respecting the ponds and weirs; the wives and children of criminals were not involved in their guilt. There were the old and wifeless, or widowers; the old and husbandless, or widows; the old and childless, or solitaries; the young and fatherless, or orphans—these four classes are the most destitute of the people, and have none to whom they can tell their wants, and King Wan, in the institution of his government with its benevolent action, made them the first objects of his regard."[2]

---

[1] Book I. part i. chap. iii. sec. 5; chap. iv. sec. 4.

[2] Mencius, Book I. part ii. chap. v. sec. 3. The whole theory of government is somewhat more fully stated in Book VI. part ii. chap. vii.: "The five chiefs of the princes were sinners against the three kings. The princes of the present day are sinners against the five chiefs. The great officers of the present day are sinners against the princes."

"The emperor visited the princes, which was called 'A tour of inspection.' The princes attended at the court of the emperor, which was called 'Giving a report of office.' It was a custom in the spring to examine the ploughing, and supply any deficiency of seed, and in autumn to examine the reaping, and assist where there was a deficiency of the crop. When the emperor entered the boundaries of a state, if the new ground was being reclaimed and the old fields well cultivated; if the old were nourished and the worthy honoured; and if men of distinguished talents were placed in office: then the prince was rewarded—rewarded with an addition to his territory. On the other hand, if, on entering a state, the ground was found left wild or overrun with weeds; if the old were neglected and the worthy unhonoured; and if the offices were filled with hard tax-gatherers: then the prince was reprimanded. If a prince once omitted his attendance at court, he was punished by degradation of rank; if he did so a second time, he was deprived of a portion of his territory; if he did so a third time, the imperial forces were set in motion, and he was removed from his government. Thus the emperor commanded the punishment, but did not himself inflict it, while the princes inflicted the punishment, but did not command it. The

It is on the conditions of life that the behaviour of the people depends. Human beings have a naturally good disposition, but not one strong enough to resist the trials of adverse conditions, especially when these are due to unjust laws. Bad governments goad the people to crime and then punish them. "This is to entrap the people."[1] If the king failed in his duty his chief ministers should remonstrate with him, and if repeated remonstrance proved fruitless, they should dethrone him. So Mencius told King Seuen to his face.[2] In the last resort the minister should put the king to death.[3] For all this of the duties of the king is not to be mere exhortation as in most preaching of the kind. It was meant in earnest, and behind it lies the sanction of just rebellion.

In fact, we feel throughout that Mencius's sayings are the very reverse of ordinary moral platitudes. They are truths applicable to all time, but not empty, as such truths too often are. On the contrary, they have a sting which we can feel even at the present day, or ought to feel if we do not. The great Chinese classical writers, in fact, laid the foundation of a distinct ethical and social ideal, in many ways analogous to the best teaching of the founders of spiritual religions, but different in

---

five chiefs, however, dragged the princes to punish other princes, and hence I say that they were sinners against the three kings.

"Of the five chiefs the most powerful was the duke Hwan. At the assembly of the princes in K'wei-k'ew, he bound the victim and placed the writing upon it, but did not slay it to smear their mouths with the blood. The first injunction in their agreement was: 'Slay the unfilial; change not the son who has been appointed heir; exalt not a concubine to the rank of wife.' The second was: 'Honour the worthy, and maintain the talented, to give distinction to the virtuous.' The third was: 'Respect the old, and be kind to the young. Be not forgetful of strangers and travellers.' The fourth was: 'Let not offices be hereditary, nor let officers be pluralists. In the selection of officers let the object be to get the proper men. Let not a ruler take it on himself to put to death a great officer.' The fifth was: 'Follow no crooked policy in making embankments. Impose no restrictions on the sale of grain. Let there be no promotions without first announcing them to the emperor.' It was then said, 'All we who have united in this agreement shall hereafter maintain amicable relations.' The princes of the present day all violate these five prohibitions, and therefore I say that the princes of the present day are sinners against the five chiefs."

Note the relationship of the emperor to the princes, a feudal relationship to which Mencius seeks to give an ideal ethical form; the supervision by the state of family relationship; the insistence on the distinction of chief wife and concubine; and the idea of purity and merit in official life.

[1] Mencius, Book I. part i. chap. vii. If this view sounds somewhat materialistic, we may set against it passages like Book III. part i. chap. iv. If men "are well fed, warmly clad, and comfortably lodged, without being taught at the same time, they become almost like the beasts."

[2] Book V. part ii. chap. ix.

[3] Book I. part ii. chap. viii.

its setting. Chinese religion was at this time and has since remained, except in so far as influenced by Buddhism, a form of animism, distinguished first by its systematic character—a multitude of spirits dependent on those of Heaven and Earth respectively; and secondly, by the remarkable development of ancestor worship. This religion offered little scope for ethical idealism except at two points—the idealization of family continuity, and the supremacy of Heaven. Of both these points Chinese ethical writers took advantage; of the first to re-enforce the doctrine of filial piety; of the second to insist on the moral unity of the empire. But in the main their concern was social salvation, and they were deliberately working out an ethical theory to contribute to that end, and appealing to the nature and training of individuals to use the means by which the end was to be reached. Thus the psychological basis of conduct and the conception of its ultimate end are not those of Buddhism or of Monotheism. For example, man is not inherently bad and redeemed from evil only by divine grace. In himself he is potentially good, and the germs of goodness in him only need favourable circumstances, teaching, and effort to come to perfection. But they are developed, not to the greater glory of God, but to the maintenance of human life, that all along the rich valleys with their million homesteads the husbandman may reap the harvest he has sown in fields unstained by blood, that he may cherish wife and child and be nurtured by them in age, and pass duly honoured to the tomb; that worthy officers be found to serve just and benevolent kings; that wars may die away; that crime may be repressed, not by punishment, but by the example of virtue; in a word, that peaceful industry and happy family life undisturbed by civil jars, official corruption, royal avarice, and military ambition, may be the lot of one-third of the human race. Not the glory of God, but the peace of man is the aim; not good fortune here nor salvation hereafter is the disciple's reward, but merely his own best self independent of all that comes — righteousness for its own sake, benevolence because it is itself the best gift of heaven. Not the chaining up of human nature, but its full and harmonious development is the object of ethical training. In other respects the ethical and the religious ideals of character are more remarkable for their correspondence than for their divergence. The modesty of the sage is not perhaps drawn in such bold lines as the humility of the saint. Forbearance and forgiveness are upheld as better than revenge, but the returning of good for evil is set aside in favour of a severer application of justice. Benevolence should be for mankind generally, but for our own families first.[1] In all this there is some infusion of practical sense which may not unfairly be set against the loss of the romantic glow. Perhaps, if we may strike a balance, there was less to stir the brain's blood, and so set men thinking and working towards wider problems yet and deeper solutions. But there was a definite theory of conduct appealing to the best of man's nature and calling him to the service of his fellow-men, and this theory has for more than two thousand years formed the actual working basis of life for a great division of the human race.

---

[1] Universalism, indeed, is not so prominent as in Mohammedan and Christian ethics. The Confucians were thinking and writing for a homogeneous people among whom the divisions were those of a decaying feudal system. They speak of mankind in general terms, but they have no sharp distinctions of race to overcome. They refer occasionally to the outlying barbarous tribes which will be "attracted" by good government, or influenced by civilized teaching. But the fate of these peoples plays no important part in their minds. Nor were class divisions a serious problem for them. Confucius lays down that "there being instruction there will be no distinction of classes" (*Analects*, Book XV. chap. xxxviii.). Undoubtedly they stand for the Chinese community as one great whole, but—from the nature of their historical position—they can hardly be said to have conceived Humanity as has been done in Western thought.

CHAPTER VI

PHILOSOPHIC ETHICS

1. THE profound conception of the Ethical basis taught by the great Chinese thinkers was arrived at independently by a movement of thought arising at about the same period of time, but in a distant part of the world, and under deeply contrasted conditions of culture. The great Greek philosophers from the fifth century B.C. onwards, worked out a theory of life in which the inherent excellence of good conduct, the strength and self-dependence of the disciplined character, the order and harmony of the well-governed state, were held up as ends of human actions sufficient in themselves to inspire effort and justify self-sacrifice, worthy to be followed by every man even if in doing so he "should escape the notice of gods and men." But in speaking of Greek thought and its distinctive message—and it is only what is distinctive and that only in the barest outline that can be touched on here—we must recognize at the outset that its method was no less important than its results. The Chinese masters inculcated some profound truths and arrived at results often closely similar to the best teaching of the Greeks. But they seem to have laid them down almost as dogmatically and with as little attempt at rational proof as though they had been dogmas of theology. Certainly there is but little trace of system in Confucius and not much more even in Mencius. They made little attempt, it would seem, to go back to first principles and ask the why and wherefore of all moral rules. Hence they were moral teachers rather than philosophers, and hence also in the practical result they accepted only too much of Chinese tradition, and left their country, after all, bound in the fetters of antiquity.

With the Greeks, on the contrary, moral philosophy begins its course. With the early thinkers, contemporaries or perhaps predecessors of Socrates, who propounded the question "What is the Good, the end of human life, the aim which a thinking being should set before him as the goal of his existence ?" there begins a new epoch in moral development, the epoch in which the ethical consciousness, long dominated by the forces which shape its conceptions unawares, begins to re-act upon them, to turn round upon the conditions that have hitherto determined its growth and inquire into their why and wherefore. This is part of a movement which extends far beyond the sphere of ethics and attacks the very foundations of knowledge and belief.

Its own processes and methods, the principles and presuppositions of all its thinking, are the last things of which the mind becomes conscious. In the earliest stages of its development in humanity it forms ideas under the stimulus of experience by methods which have all the roughness and imperfection of hereditary or instinctive reactions unpolished by rational reflection. The ideas themselves are loose and slippery. They are linked one with another, not by any coherent logic, but as the vague impulses of casual association suggest, or as emotional conditions predispose the imagination to impute connections between events. It is out of this chance-medley of mental forces that the ideas of primitive fancy are evolved.

We have seen how the advance of intelligence brings some order into this chaos, how in the building up of thought casual suggestion is replaced by systematic meditation in which trained reasoning and methodical analysis play their part. We have seen how under these influences the naïve imagery of the childish mind yields to the profound conception of the sage, in which finally the structural categories underlying all experience are brought clearly before consciousness, and utilized in the construction of a philosophy of things.

In such a construction there is undoubtedly implied a certain criticism both of the conceptions formed and of the methods by which they are formed. Yet underlying it all are assumptions which are only brought to light by a still more fundamental criticism, the criticism wherein thought seeks to determine its own value as a measure of reality. Consider, for example, the question of logical method. Criticism may have shown some reasoning to be fallacious, and other reasoning to be apparently sound. But what is this appearance? Is it, after all, only an impression made on us, which we accept as convincing because we cannot resist it? But if so, what is its worth? The fallacy also impressed us till some one pointed out the flaw, and perhaps it still impresses other minds and seems as sound to them as it appears absurd to us. Is there, then, any more objective or absolute standard of sound logic which, once revealed, would settle all doubts, and if so, how are we to know it? Again, suppose our logic is sound so that we may unerringly connect concept with concept, what precisely is the value of it all at the end? We may forge a perfect chain of logical links, but what does it hang from? Is it suspended in mid-air, or are there first principles fixed in the adamantine firmament, or possibly solid supports reared on earth, from which the chain may hang? Does thought form a world of its own, or does it relate to an independent reality, and if so, how is the relation established and its validity guaranteed? Questions such as these, never finally resolved, but constantly renewed with deeper meanings and more subtle suggestions, form the permanent content of the philosophic criticism of thought.

This criticism, being directed throughout to the discovery of an "objective" standard which is to rescue truth from the fallibility of ordinary human weakness, must, in the first place, concern itself with method. It will evolve a logic to justify the distinction of the sound from the unsound in reasoning, and systematize valid argument on some connected and coherent principles. Secondly, it will inquire into the genesis of our conceptions and will test them by reference to the experience from which they are educed. Then, applying these methods, it will seek to reconstruct its conception of Reality. The Socratic Elenchus (notwithstanding the limits which Socrates imposed on himself), the Platonic Dialectic, the Aristotelian Logic and Metaphysics, were successive attempts in this direction. The reconstruction of Reality on the basis of a criticism of first principles was in fact first seriously taken in hand by the Greeks. But in the progress of criticism a problem emerges affecting the bare possibility of Reconstruction—a problem which can hardly be said to have come fully within the purview of Greek thought. The mind itself may be regarded as a product of the Reality which it seeks to understand. Or, conversely, the world of experience may be regarded as a product of the Mind. Its sensations, its conceptions, its methods, its principles, the very self-criticism by which it has been seeking to rectify its principles, may all be results of its own growth and dependent for their peculiar shape on its own development. If this is so, must not the ultimate result of the philosophical movement, however far it may push its criticism of knowledge, still lie within the circle of the mind's own making? Will not the truth that satisfies us still be a truth for ourselves alone, or if it is more, how can we be assured of it? Truth is truth, but does it give us Reality? To determine this question we must "know ourselves" in a new sense. We must ascertain the facts as to the constitution and growth of the mind. We must re-examine the very conceptions of Truth and Reality. We must determine the conditions under which knowledge is possible, we must ascertain the limitations under which thought arises and ask how far those limitations are overcome. To attempt this more thoroughgoing evaluation of the subjective factor in knowledge has been the special task of modern philosophy. To some aspects of the problem we shall return later, confining ourselves in the present chapter to the philosophy of the Greeks, and, indeed, to one branch of their philosophical development. Their reconstruction of knowledge and reformed conceptions of the world-order intimately affected their ethical thought, which was, indeed, merely a part of the general movement of critical reconstruction, but it is only the ethical side of the movement which can be outlined here.

Indeed, a philosophical reconstruction is by no means less necessary in the region of conduct than is that of knowledge. On the contrary, rules of conduct have, as a matter of history, grown up under conditions eminently unfavourable to a rational apprehension of the ethical order best suited to human needs. They have arisen under the conditions of group-morality, and are tarnished with the brutalities incident to the struggle for existence. They have been infected by gross conceptions of magical influence and spiritual resentments. They have been distorted by the sophistications with which men hide their spiritual nakedness. They have been bent into weapons used for the justification of class or race supremacy, of arbitrary power, of sexual wrong. In no other department are the fundamental categories in such permanent need of criticism. Good and bad, right and wrong, virtue and vice—all the elementary conceptions forming the pigeon-holes wherein we arrange our ideas about conduct, what at bottom do they mean? What is their value and justification? What grounds have we in reason for the judgments which we pass on conduct when we use them? Are they anything more than expressions for our feelings, or have they a higher authority? Is the standard by which we apply them final, or, seeing that human standards vary, is there any higher standard to which a rational society would conform, and if so, how is it to be ascertained? Such are the questions of philosophic ethics, and they cut deeper than any simple ethical idealism. We have seen ideals of character arising under Buddhist, Christian, and Confucian influence, and the mere formation of such ideals involves an immense advance in reflection. But such ideals are formed by laying stress on certain elements of virtue and by seeking to choke up certain sources of vice without any systematic inquiry into the meaning and object of virtue, without any rational examination of the ultimate purpose and function of human conduct, and therefore without any scientific determination of the rules by which it should be guided. Such ideals accordingly, though they may carry us far beyond the common morality of the average man, are not necessarily well adapted to the actual conduct of life and the furtherance of human progress. They may even lead us further away from the path. The ultimate hope of a rational reconstruction of ethics must be to bring us back from the rules and ideals that have grown up at random and without any thought-out method to the conditions of conduct which a critical theory of what is best for humanity may prove to be required. The first steps towards such a reconstruction are to be found in Greek Ethics, and the resulting movement of thought, maintained with many fluctuations of vigour throughout the period of classical antiquity, interrupted though not wholly arrested by the revival of the theological conception of ethics, and resumed in a new shape in the modern period, engendered the principal forms of ethical theory which it remains for us to mention. To write the history of the movement would be incompatible with the scope of this work. At best, the most fundamental features which distinguish this order of ethical conceptions from others may be summarily mentioned.

2. So far as he had a theory at all, the early Greek, as we have seen, held to the magico-religious basis of law and morals. The Furies punished the parricide. The perjurer or the betrayer of his guest aroused the wrath of Zeus. The curse fell upon the offender, and would work itself out in the fate of his children, if not in his own life. A public offence, as in the celebrated case of the Alcmæonidæ, might involve a city in disaster and render necessary a public ceremonial of purgation. The wrath of Talthybius fell upon the Spartans for their unceremonious treatment of the heralds of Darius, and could only be appeased by the devotion of two Spartans who voluntarily surrendered themselves to the Persian king to deal with as he pleased. But stronger, perhaps, than any explicit dread of divine punishment was the half-mystical reverence for established law, the customs written and unwritten of each city, and the common traditions of all Hellas. With the absolute and unquestioned authority of established tradition was bound up, as the Greeks felt, inarticulately perhaps, but none the less vividly, all that made the free civic life of Greece possible. The Greek citizen was a free man because he was governed by law, and the culmination of the charges against the tyrant was that he overrode all laws, written and unwritten. To render back to the laws the service due to them was the pride of the free Hellene, who contrasted his freely rendered service to a constitution supported by his own voluntary efforts with the slavish submission of the Oriental to the arbitrary will of his master. The attitude of the true freeman is nowhere more justly stated than in the words which Herodotus puts into the mouth of Demaratus, the ex-king of Sparta and an exile at the Persian court, quoted in the first part of this work. But perhaps the most complete expression of the traditional Greek view is given in the well-known defence of Antigone. Creon has tyrannically forbidden the burial of her brother. She tells him why she has disregarded his proclamation—

"It was not Zeus who laid this ordinance on me, nor Justice, housemate of the gods below, by whom these laws were laid down among men. Nor did I deem thy order of such might that thou, a mortal man, shouldst override the unwritten and unshaken laws of gods. For these are not things of to-day or yesterday, but live for ever, and none know whence they sprang. For them I was not minded—not in fear of any man's pride—to pay the penalty among the gods. That I should die, I knew—how else?—even hadst thou made no order, and if before my time I die, I call it but a gain."

Here the dominant note of truth and right for ever against the petty tyrant of a day, who holds mere life and death in his hands, blends now with a whisper of a judgment beyond death, and a justice that sits as assessor on the judgment-seat in Hades, now with a more decided mysticism which makes the traditional law supreme, not because it comes from the gods, but because it is eternal and its source is lost in the darkness out of which things come.

3. This uncritical acceptance of traditional morality was rudely shaken by the negative movement of thought in the fifth century. The dialectics of Zeno had shaken the first principles of ordinary knowledge. The metaphysics of Heraclitus had attacked the testimony of the senses. On the speculative side the negative movement culminated in the doctrine of Protagoras, that "man is the measure of all things, of those which are that they are, of those which are not that they are not." The application to ethics does not appear to have been made by Protagoras himself, but it lay ready to hand and was freely used by some of the so-called Sophists, men like the Polus, Callicles and Thrasymachus of the Platonic dialogues. If there is no rational

ground for our knowledge of nature, how can we expect to find any for our theories of the moral life? True, there is law in every state, and he who breaks the law will be punished by law, but what is the source and authority of law itself? The law which the tyrant makes rests, as all men admit, on the strength of his own arm, wherewith he will punish those who break it. But in precisely the same way the Law which the ruling Few impose on the subject Many rests on the power of Fear, whether due to superior valour or better organization, to enforce their will; and by precisely the same argument in a democracy the law is simply what the majority who are here the stronger decide that it shall be. In every case the "ruler," whether an individual or a class, frames the law in his own interest and enforces it by his power. Justice is merely a name for the "interest of the stronger." Hence it was that the rule of justice differed, as the travelled Greeks were discovering, from nation to nation. Herodotus told of tribes who were as scandalized at the Greek custom of burying the dead as the Greeks were at them for eating their dead. If right and wrong were founded in nature, this would not be. The same rules would be in force everywhere. But depending on convention, they vary from place to place as it suits the dominant power to conceive them. And so *νόμος*, the law written and unwritten, is identified with convention, or institution depending on the arbitrary and changeable will of men, and is opposed to *φύσις*, nature, as the temporary and variable to that which is permanent and rooted in the essential structure of things.

The extent to which this sceptical doctrine had sunk into the practical life of Greece may be measured by any one who will contrast with the passage quoted above, the arguments ascribed by Thucydides to the Athenian delegates in the famous Melian Dialogue.

> "As for the gods, we expect to have quite as much of their favour as you. . . . For of the gods we believe, and of men we know, that by a law of their nature wherever they can rule they will. . . . As to the Lacedæmonians . . . of all men whom we know they are the most notorious for identifying what is pleasant with what is honourable, and what is expedient with what is just,"[1] etc.

4. Thus, the breakdown of the traditional Greek theory of the moral sanctions, of the divine basis of virtue, and the authoritative supremacy of law, was not merely a matter

---

[1] Thuc., v. 105. Tr. Jowett.

of speculative interest. It represented a change which had sunk deep into the minds of the people, and was a cause of anxiety to all thinking men. Accordingly, the efforts of the constructive thinkers of Greece during the latter part of the fifth century, and throughout the fourth, were devoted to the reconstruction of private morals and public law, to find arguments in admitted principles of thought or in the unimpeachable evidence of experience to replace the old supernatural basis of virtue, and to determine, in the phrase of the day, what was natural in state law as opposed to what was merely a matter of human agreement. In this effort the negative movement had already supplied a point of departure, for it had in essentials formulated a first principle of action; that every man aims at what is good for him, or at least at what appears good for him, was the principle tacitly or openly avowed to which negative criticism had been brought. This principle was taken up by Socrates and his followers and made the starting-point of a moral reconstruction. No Greek thinker, whether constructive or negative, idealist or hedonist, Platonic or Aristotelian, called this axiom itself in question, but it was possible to show, as Socrates was the first to discover, that, however selfish in form, it was capable of an interpretation which would not only reconcile it with the highest claims of the moral consciousness, but even set these claims upon an apparently firm basis in reason. For though it may be true that all men aim at the apparent good, it does not follow that that good is the interest of self, or the satisfaction of the sensual nature as opposed to the fulfilment of a man's function as a citizen and the cultivation of his higher faculties. On the contrary, Socrates, whose philosophical method was that of conversation at the dinner-party or in the market-place, was easily able to appeal to the ordinary opinion of the average man, and to elicit from him that he held courage and justice, wisdom and temperance, the ordinary virtues of the good citizen, in higher esteem than the pleasures of the senses or the interest of money-getting. But if this were so, if it were in reality best for a man to restrain his lower nature and to practise the duties of a good father and a good citizen, if the higher good, however defined, lay in this direction, then the principle that each man chooses what appears to him to be good will inevitably lead a wise man, who has found out where the true good lies, in the path of virtue and good citizenship; and if we find people who are cowards and unjust and unbridled in their licence, it is because they do not know where their true good lies. So the critics who held themselves superior to the ordinary moral tradition found their own weapon turned against them. Their principle that every one must aim at his own good is freely adopted, with the rider that he who knows his true good finds it essentially in adherence to those traditions which the sceptic scorns. The abandonment of virtue is a proof, not, as had been urged, of superior wisdom, but of ignorance of the real interests of human nature. Virtue, in fact, might be defined as a kind of art of measuring—the art of measuring values aright. He who knows what true pleasure is finds it in the pursuit of virtue; he who finds it elsewhere has made a mistake in his fundamental principles.[1]

5. But, after all, it was open to the critics to rejoin that the intrinsic value and goodness of the just and virtuous life was assumed rather than proved. By what argument, it might be asked, or by what appeal to experience can it actually be made clear to a doubter beyond any possibility of a cavil that the man who is sacrificing some direct interest, some money-profit, or, perhaps, his personal security, for the sake of justice, is not making a gross miscalculation of values? In what sense is it urged that justice is in itself superior to injustice? Do we not admit that in refraining from injustice we are giving up something that is useful to ourselves and seeking the gain of another, and is this not incompatible with our first principle that every reasonable man seeks his own good? It is true that his losses might be made up to the just man by human rulers or by a divine judge, but what are we to say of the position of the just man under a tyrant or a tyrannous democracy, and what are we to think of the problem of divine judgment when the whole framework of the supernatural is being called in question? Besides, if the just man is acting for the sake of a reward—indirect and remote it may be, postponed to a future life it may be—is he really acting from a principle of justice? Is he not, after all, seeking a reward for himself though he calculates on a different basis from the unjust man, and if he miscalculates, need we admire or pity him? In a word, had any one the ring of Gyges would he not, once rendered invisible and so invulnerable to his fellow-men, do as Gyges did, and practise against them all manner of villainy that might be necessary in the course of satisfying his own desires? These positions are stated with extreme force and clearness in the second book of the *Republic*,

---

[1] This is the position attributed to Socrates in the *Protagoras*, and no doubt represents one side of the Master's teaching, though the hedonism of the Dialogue probably represents one aspect only of the Socratic view.

and the demand is made upon the Socrates of the Dialogue to give an account of justice which will sweep all this network of doubts aside. Socrates is to show that the just man is happier and better off than the unjust, even if he escapes the notice of gods and men, even if he is misjudged in this world and the next, even if he suffers the penalties of injustice and the unjust man gets the rewards of the innocent. The benefits of justice in itself are to prove such as to outweigh every possible consideration of external reward or penalty. Never before or since has the claim of the moral consciousness to override every other consideration been more uncompromisingly stated. The method by which Plato makes Socrates set out to answer the formidable difficulties propounded to him is that of inviting his hearers to a deeper analysis of the nature of the human being and of the state. He finds that human nature is in itself a commonwealth in miniature, in which there is a ruling portion represented by the reason. There is a spirited element whose natural function it is to assist the reason, as the military element of the state should assist the philosophical rulers. And, lastly, there is within man a many-headed monster of desire like the many-headed mob of the Athenian democracy. There are certain natural and proper relations which these different portions of the soul should maintain towards one another. The reason should rule, the spirited element should assist it in so doing, the many-headed monster should be under control; and when these conditions are satisfied a certain harmony results; it is well with the man, his inner man is at peace. And in this peace and harmony the cardinal virtues which the ordinary Greek recognizes have their different parts to play. In the due exercise of the reason there is wisdom. In the aid rendered to wisdom by the due cultivation of the emotional element which enables us to withstand alike the temptations of danger and the seductions of pleasure, there is courage. For though the weak man may have implanted in him the right opinion as to how he should guide his action, something more than opinion is necessary when it comes to the pinch; there must be that tenacity which enables us to maintain our opinion in the face of temptation, and to show that tenacity is to be brave. Again, there must be an agreement among all the three parts, a harmony stretching through the whole of the soul, that reason should rule, and this harmony is temperance. Given these three virtues we have the conditions necessary for the healthy functioning of each part of the soul. This active functioning, which consists in a perfect co-operation of all parts of the soul, each doing its own work without going outside, is Plato's definition of justice. Justice, then, is, in the first place, the harmonious healthy life of the soul itself. But it is this inner harmony which enables a man to do his duty in the world to which he belongs. He plays the part required of him in the larger life of the state, because each element in his own nature plays the part required of it within the miniature commonwealth that forms his soul. The outer harmony depends on the inner. A man behaves as a good citizen because his moral nature is in healthy working order, and, conversely, when he fails in that duty his own nature is out of harmony with itself and is corrupted and diseased. Thus, at the end of the argument, justice is above all things valuable to its possessor, in so far as the soul is more valuable to itself than all the rest of the world. Justice is to the soul what health is to the body—it is its active excellence and perfect life; without it, nothing that seems good can be really good, with it there is no evil that cannot be faced. If pleasure be alleged as a more rational end for man, it may be retorted that it is only the pleasure of the soul which is a real pleasure. The pleasures of the many are transitory and full of contradiction. We see them on their holidays, then as now, filling the unreal part of themselves with unreal joys. The philosopher alone knows what reality is, and is proved, with a characteristic bit of Platonic humour, to have at least seven hundred and twenty-nine times as much real enjoyment as the devotee of the senses.

6. Thus justice, which is here in reality the name for virtue, is founded upon an explicit theory of the nature of man, and both the positions of the sceptic are met and turned against him. On the one hand, it is shown that if a man aims at what is good for himself, he must, if he is a reasonable and instructed being, endeavour to obtain that which is for his soul what health is for the body. On the other hand, if it is asked on what laws or conditions of nature is justice founded, the answer is that it is founded on the constitution of human nature itself and of the societies which human beings form. These positions are in essence retained by Aristotle, though with more of that compromising spirit which belongs to Aristotle's method. The good is that at which everything aims, and is to be found in the performance of that function which nature assigns to it in the scheme of things. In this scheme the function of every class of being lies especially in the active realization of its own specific character. The specific character of man is that he is a rational animal,

capable of governing himself by reason in a social life and capable of exercising his reason in the great department of speculation as a philosopher. In the first direction his moral virtues are developed, in the second his speculative powers. And so the well-being of man consists in an active realization of the soul-life in accordance with what is excellent, and especially in accordance with the best and highest of excellences. This is the essence of well-being. But perhaps it would be extreme and paradoxical to maintain that external misfortune has no effect upon it. A man is not happy if the misfortunes of a Priam beset him. Yet even in such a case the nobility of his character will shine through. He will never be wretched as the caitiff and the sensualist might become; it will still be well for him in that he bears his misfortunes better than other people. But though fortune may help to make or mar, and though there is an element of chance in human life which is never wholly mastered and overcome by human reason, nevertheless, speaking generally —and Aristotle is clear that we can only speak generally and not universally in dealing with human affairs—the man who resolutely makes the best of his own powers and actively realizes them, is the happiest. He has no need of the ordinary pleasures as an appendage, so to say, to his life, for this realization of himself at his best has its own pleasure within itself; as his life is the best, so is it also the pleasantest. Bad fortune will hinder him, good fortune will aid him in making the most of himself and in showing all that he has it in him to be. But this is at the utmost a not indispensable advantage, and the essence of his well-being is that he himself does well.

7. Thus, upon the fundamental question of moral philosophy Socrates, Plato and Aristotle were essentially at one. That question is by most modern moralists defined as the question of the nature of moral obligation. Why should I do what is right, or why should I recognize the distinction between right and wrong, ought and ought not? Is it a matter of some external reward or punishment befalling me according to the character of my conduct, or is it a matter of some intrinsic quality in the conduct itself? To the Greek philosophers the question took the form: What is the character of that which is really good for man, or in what does human well-being consist? The answer which they gave to it was essentially that it consists in the practice of virtue as being that wherein human nature finds its best, happiest and most harmonious expression. This method of handling the problem leads at once to the converse

question, Why do the majority of men at one time or another neglect virtue and do that which is evil? Nothing could be more characteristic of Greek modes of thought and of the gulf which separates them from Christian and post-Christian ethics than the method of handling this question. To the Christian theologian and to the moralist handling the subject with theological conceptions behind him, the difficulty is to see how men come to do good. To the Greek thinker the paradox is rather that so many men do wrong. From the axiom from which all Greek thinkers started, it was clear that men could only do wrong from some mistake in their conception of what was good. If, as the three great thinkers whom we have mentioned were agreed, the good for men lay essentially in the pursuit of virtue, then in strict logic it could only be from some ignorance of its first principle that men went astray. Socrates, in fact, drew this deduction apparently without any hesitation or compromise. To him vice was ignorance, and if a man were found to be intemperate, cowardly or unjust, it was only because he did not know what true temperance, courage and justice were, or how to apply the rules based upon them to the circumstances of his own life. He was a bad craftsman in the art of life, a man who did not know how to use his tools, and capable of being improved by instruction and by instruction alone. It was easy to see that the position so uncompromisingly stated led to paradoxical results. It tended to make all conduct a matter of the intellect and not of the character, and so in a sense to destroy moral responsibility. Accordingly in Plato we have an attempt at a reconstruction of the Socratic view. At any rate, in the maturer Dialogues we find, as has already been remarked, that the emotional or spirited element in man is called upon to take its share in the work of governing the wild beast that is within human nature. The force of character which enables a man to maintain his opinion is recognized as something distinct from the purely rational element in him which enables him originally to gain his opinion. In the story of Leontios the son of Aglaïon, the internal moral conflict, the division of the self into factions, and the wrath of the better part of human nature at the victory of the lower, are dramatically described. But for a complete theory of responsibility as far as Greek thought could take it, we must turn to Aristotle. Aristotle does not deny the major premiss from which the Socratic syllogism starts. Every intelligence, he admits, chooses what is best for itself, but in order that a right understanding of what is best may be attained, something more than intelligence is required. It is, after all, only moral men who can thoroughly understand the nature of a moral code, for in moral matters intellectual enlightenment depends upon character. Hence those are mistaken who urge that we cannot be responsible for wrong-doing because the wrong-doer acts in accordance with what appears to him to be good and, if he is mistaken, cannot be held responsible for his ignorance. The reply to this is that ignorance proceeds from and is a mark of bad character, and it is his own slack method of living which has corrupted the bad man's views and made him at once remiss in his conduct and mistaken in his judgment. Virtue does not come purely by nature, nor can it be taught in the schools like an art, but along with teaching, or rather antecedently to teaching itself, the youth must undergo a training in practice. This practical training will produce the necessary character. The character being formed will give us the right aims, and then a trained intelligence is necessary in the form of Practical Wisdom to reason from those aims and apply the results to practical affairs. This, in brief, is the psychology of the good man. Contrasted with him stands, in the first place, the profligate who has what Plato called "the lie in the soul," who entertains, that is to say, the radically false principle of life that the proper thing for a man is always to pursue the pleasure of the moment. This character is again consistent. Bad training has given its possessor a bad principle, and he applies his principle resolutely in action. But between the good and the bad stands a third character whose essence is to be inconsistent. This is the incontinent man who has sufficient moral enlightenment to admit the goodness of virtue as a general principle, but who is so far overcome by passion and appetite as to find means of evading the application of the principle to the facts of conduct. He allows himself to be deluded by self-sophistication, and lets his desires represent the action which he is about in a light which prevents it from being seen to fall under the general rule which would forbid it. He does not deny that the courageous man is superior to the cowardly, but he is always sure that the present occasion is one which calls for discretion, and not for an imprudent display of valour. He does not uphold injustice, but while constantly overreaching his neighbour, is all the time convinced that he is only too modest in maintaining his own rights.[1] But all this intellectual jugglery does not free him from responsibility. It is the consequence and the sign of an imperfectly disciplined character, and each man not only chooses his own actions, but, at least at the outset, he chooses his own character also, because the character is made by the actions. Human nature, upon this view, is neither intrinsically good nor intrinsically bad. It needs no supernatural grace to lift it out of the slough of original sin, neither is it born in a state of innocence from which it falls away as life proceeds. It has originally a natural capacity to be influenced by training and teaching, and if favourably situated where the winds blow upon it from healthy and salubrious climes, it flourishes and grows up into wisdom and moral goodness. If it fails to receive the right nutrition, and if no effort is made to respond to the training of the spiritual pastor and master, then it falls away, possibly into the deliberate corruption of the principle of selfish pleasure, perhaps rather into that twilight of the average sensual man in which the rule of right is something seen and acknowledged from afar, but never allowed to shine unshaded upon the agent's own conduct.

---

[1] These illustrations are not Aristotle's, who confines himself to the case of the actual obliteration of rational reflection by sensual appetite. But the principle is the same. The great mass of wrong-doing, particularly in public affairs, seems to have a measure of self-sophistication as its necessary condition. Few people will admit nakedly, even to themselves, that what they do is wrong. They must have some specious terms in which to cloak

8. From the question why we should concern ourselves to be virtuous and how we should go about to be virtuous, we pass next to the question in what virtue consists. If by this is meant—What in the modern sense is the moral standard? it must be admitted that none of the thinkers we are here considering have a perfectly definite answer to give. Even the famous Aristotelian Doctrine of the Mean is not a doctrine laying down an objective measure to which the rules of conduct and the laws of the state should conform. Nevertheless the Socratic thinkers have an ideal of their own which in many respects is very clearly defined. It is by no means identical with the ideal of the more spiritual religions; we may say that it is both more and less than they are. It is essentially an ideal for this world, and it bids men make the best of their life in this world. It is an ideal made for human nature. It is not one which consists in overcoming human nature. It is an ideal for the active citizens of a free state, not for men who can only hope to practise virtue by retiring from state affairs. Though they put the philosopher's life above the statesman's, neither Plato nor Aristotle could forget that they were members of a self-governing community, owing their freedom and their culture

---

the deed. They must screen themselves from their own inner consciousness, and thus, though sophistication is not the originating cause, it is an essential condition of most conduct, public or private, that conflicts with admitted principle.

to the security which their citizenship gave them; nor could they leave out of their minds that a great part of the impulse which had turned men's minds to moral philosophy was the endeavour to save the city state from that loosening of the bonds of political obligation which they saw going on around them. Hence the first duty of man, whether in the Republic or in the Ethics, is to be a good citizen. Whether, indeed, he can always be a loyal citizen in a bad state, is a point which gives Aristotle some difficulty; but that the ideal arrangement is that he should find a state of society in which to be a good man and a good citizen are one and the same thing is a matter about which there is no doubt. The good citizen is one who can both rule and be ruled. He has the self-discipline which enables him to submit to others when their turn comes, and the wisdom which enables him to direct, not only his own affairs, but those of the state when his own turn comes. He must be ready to fight for his city in war and to count it the noblest of deaths to die for her. He must be moderate in his pleasures, capable of restraining appetite lest it should get the mastery of him, not given to anger, but capable of righteous indignation when circumstances require it, liberal without ostentation in money matters, and careful of the rights of others to the point of being willing always to take less than his own share rather than press his interests too keenly. He should have an adequate measure of self-respect, and a great-souled man, who is in a sense the perfect type of this kind of character, being worthy of great things, should deem himself worthy of great things. He should know himself for what he is, and do nothing to belittle or demean himself. In voice, in gait and in gesture his dignity should be reflected. He should feel a proper pride in himself, and trust to that pride to keep him from anything degrading. He is thus the direct antithesis of the holy and humble man of heart whom the Christian teaching holds up to esteem. The antithesis is inevitable; the Christian saint is conscious of a sinfulness from which the divine grace alone has raised him, and which nevertheless still tinges and stains all that he does when it is matched against the white radiance of infinite perfection. The great-souled Greek has learnt to govern his own nature; he measures himself with his equals, and if he owes a debt it is to his country and her laws, which he repays in the capacity of faithful and upright magistrate and citizen. And thus the Greek ideal is cast rather in the mould of the hero or the statesman than in that of the saint. Justice is far more prominent than benevolence; in place of the mortification of the flesh we have a reasonable temperance, a self-restraint which prevents the lower nature from usurping the place of the higher.[1] We have the conception, perhaps not less illuminating, that justice, being good, can only have good as its result, and therefore the punishment that is just, far from doing harm to the criminal, is medicine that he should welcome for his own sake.[2] Finally, with the patriotism bound up with the city state we get the inevitable limitation which a purely civic morality entails. The rights and duties which the Greek citizen recognized were obligations existing in the full sense only as between a limited circle of free men. Plato does not carry his humanitarianism beyond the point of urging that, in making war with one another, the Greek states should treat the conquered as they do now in the civil contests of factions within each state, and that, in making war upon the Barbarian, they should treat the conquered as they now treat conquered Greeks. Aristotle grades the rights of human beings according to the degree in which personality is developed. The man capable of full citizenship is the man fully capable of directing affairs, and he is the possessor of practical wisdom in its completeness. The woman, the child and the slave who are not so qualified have inferior rights, and we have seen how Aristotle found in this a justification for the inequality of the sexes and for slavery. Yet the slave is, after all, a man, and, in so far as he is a man, he is capable of friendship and of entering into and fulfilling obligations. Rights, as a modern might put it, depend on personality. But personality—the capacity for free, responsible self-direction—is not the attribute of all human beings.

Such, then, in brief, are the virtues and limitations of the civic ideal, but we must always remember that neither in Plato nor Aristotle is this the highest ideal of all. The idea of rising beyond human nature to something beyond it, the idea of becoming citizens of a better world than this, is to both the crown of their work; and we see in them the way paved, not only for the wise man of the Stoic philosophy who should reach perfection in a state of slavery or under a tyrannical rule, but even for the Christian saint who found his highest bliss in withdrawing from the affairs of this world altogether. The Platonic philosopher only remains a statesman from his sense of obligation to the city which has nourished and trained him. We shall not do him an injustice, says Plato, if we compel him to return into the cave where the prisoners of this world dwell, watching the play of unreal things in a dim and uncertain light; but in his heart he will always desire to range abroad freely in the Elysian Fields, where by the purer light of reason he can contemplate the essential goodness of things. So in Aristotle's scheme, for the philosopher the ultimate value of practical wisdom is to so regulate the affairs of life and bring the lower elements of the mind into order as to set the speculative wisdom free to rise to those higher objects of contemplation in which the Sage finds his true delight. The philosopher remains a man, partaker of a corruptible nature, and, therefore, incapable of sustaining a permanent conversation with high and heavenly things. Yet he must, as far as possible, put off his mortality and put on the likeness of the divine intelligence, which is the centre of the universal order about which and towards which all things move.

---

[1] In some of the Platonic Dialogues this is pushed to the point of asceticism, and this line of the Platonic teaching is carried further by the old Academy and revived in Neoplatonism. But the maturer mind of Plato himself, as seen, for example, in the *Republic*, does not push asceticism beyond the limit of healthy self-restraint in the interests of the character as a whole.

[2] That justice, being good, can never show itself in doing harm either to one's enemy or to a bad man is the gist of the argument with Polemarchus in *Republic*, i. (see esp. p. 335). So in the Laws (Book IX. 854) the object of punishment is never evil, but to make a man better, or at any rate less bad. Similarly in the Ethics, only the incurable are to be altogether "put beyond the boundaries."

If we find this ideal lacking in some of the graces of those ethical systems which are associated with the spiritual religions, we must admit some counterbalancing merits of no less importance to Ethical growth. Instead of the rule of self-repression we have the ideal of expansion, of harmonious self-development, an ideal which may on occasion involve in it the necessity of extreme self-sacrifice, even to the point of dying for friend or for country, but which in more fortunate circumstances blossoms into the full flower of human excellence conceived as the realization of many-sided capacities, physical, moral, intellectual, and spiritual. Secondly, we have the conception that this ideal is to be sought, in the first place, in patriotic devotion to the state regarded as a community of free citizens existing for the very purpose of glorifying common life and bringing forth from it the best it has in it to be, an association that comes into existence that men may live, but continues to exist that men may live well. Thirdly, the gifted man rises above, though never beyond, this civic ideal. He may never neglect the spiritual mother that has borne him, yet he has his own life apart, a life which is, in later phrase, hid with God, sharing with him the spiritual joy of contemplating nature and seeing that it is good, bathed "in that content surpassing thought the Sage in meditation found, and walked with inward glory crowned."

9. While Plato and Aristotle may be said to have continued and developed the Socratic condition in its fulness, different sides of the Master's teaching, taken by themselves, became the sources of separate schools. The hedonistic tendency in Socrates was developed by Aristippus, and through him became the source of the Epicurean philosophy. The more ascetic tendency which sprung from the Socratic teaching of self-containment and the practical hardihood and moderation of his life, became the central feature in the teaching of Antisthenes. Here the doctrine that virtue is the essential condition of happiness is pushed to the point from which, as we have seen, Aristotle drew back. Man is made in a fuller sense the master of his fate. To live in accordance with virtue is laid down as the end of life, and it is the object of the wise man to render himself independent of all external conditions over which he himself cannot exercise control. Aristotle, in defining self-sufficiency, laid down that we cannot apply the term to any man considered by himself, but only by taking into account his family, his friends, and, indeed, his city, since man is by nature a political animal. To the Cynic, virtue alone was self-sufficient for happiness, needing nothing further, unless it were a Socratic fortitude. He had overcome desire. He would enter into no hampering bond with other human beings. In particular, the city was one of the encumbrances from which the true philosopher was free. For a home, his tub sufficed for Diogenes, and if asked of what state he was a citizen, he replied that he was a citizen of the world—a cosmopolitan. Thus, a full-blown doctrine of self-reliance makes also for universalism. The particular and special ties by which men are grouped together fall away, and with the abstract assertion of the human personality as the supreme object of life and as ruler of its own destiny, there arises also the conception of universal humanity as the only community to which the individual owes an allegiance. The doctrines of self-mastery and world-citizenship thus originating with the Cynics, were developed into the most influential system of antiquity by the founders of Stoicism. The wise man of the Stoics was to live, in accordance with the first formula of the school, consistently. In accordance with the second and better-known formula he was to live consistently with Nature. But what was Nature? It was the universal order and harmony of things where everything by a divine overruling providence had its place, where everything which fulfilled its nature served the whole, where the healthy life of every part was a contribution to the life of the whole organism. The wise man learnt, in the first place, to contain

himself and to bow to the universal order of things; to will, as Epictetus said, that each thing should take place as it does take place—that is, "as the disposer of things has disposed them; and he has ordained that there should be summer and winter, plenty and scarcity, virtue and vice, and all these contraries for the sake of the harmony of the whole." In this universal scheme of Nature man must play his part in accordance with the natural capacity assigned to him. He is the child of God in a special sense, and he should realize, therefore, that he has no lowly or ignoble birth, and realizing that, he will have no lowly or ignoble thoughts about himself. A god is given to each man, a deity (in the shape of his own reason), to guard over him; one that is sleepless and incapable of being deceived, who, if you shut the doors and make it all dark, is still there with you, and with him, God Himself. "For you are not alone, but God is with you and your deity." God, in disposing things, has put certain things within our power, or rather within the power of this controlling deity within us—our reason. Our part in life consists in ruling those things well, and in realizing that other things are such as we cannot rule. And since God is good he has put within our power all things essential to our own happiness to possess. It follows that external things which we cannot control are indifferent to us, and all that matters to us is to preserve our own souls untouched. Externals are merely the material, in the use of which our own character manifests itself. "Good things are the virtues and what appertains to the virtues; evil are the opposite to these; indifferent are wealth, health, and reputation." He whom these things can disturb is not a wise or virtuous man, but if you ask who is the invincible, he is the man who has put the world beneath his feet, whom none of those things which are independent of his will can move from his course.

This self-centred conception of the wise man can at times be pushed to the point of harshness and coldness. For instance, in discussing suicide, Epictetus bids the philosopher remain in the bodily prison as long as reason tells him, just as Plato had already said, that he is placed there as a sentinel and must not desert his post. God has need of the world and its inhabitants, but if He sounds the signal as he did to Socrates, then the philosopher should obey the signaller as his general. But in the performance of duty, the feelings of his relations, even of his mother, are not to be taken into account. It is not your action that will grieve them, but just that which grieves you—namely, their own opinion. "Do you take away your own opinion, and if they do well they will take away theirs, and otherwise it will be on their own responsibility that they will lament." But Stoicism has a softer and more social side. Since God is the father of all, it follows that all men are brothers; the slave differs from the emperor only by accident of external position. If Epictetus is asked how one is to refrain from anger with a neglectful slave, he will answer, "Slave yourself, will you not bear with your own brother? he has Zeus as his forefather, is a son of the same loins as yourself and the same descent. . . . Do you not remember who you are and what men you are ruling, that they are kinsmen and brothers by nature, that they are descendants of Zeus?" Do you answer—I bought them? If so, you are looking "into the abyss, into the wretched laws of the dead and not to those of the gods." Thus the brotherhood of the Stoic transcends the gulf betwixt bond and free; equally it obliterates the distinction between the fellow-citizen and stranger,[1] and the great and supreme community is the society of man and gods from whom all things come. "The poet says, 'Dear city of Cecrops,' will you not say, dear city of Zeus?"

Though hard with himself, the Stoic could not be hard with the offender, for vice, says the mild emperor following Socrates, is ignorance of the good, and I who have seen good could not be angry with the bad man who is my kin. Moreover, if your father does wrong, says Epictetus, he suffers already in character. Do not then wish him to lose anything else on that account. Even the false judge can do you no harm. The real evil of punishment falls always upon the offender, and what have you to do with the evil which belongs to another; if the judge's decision is unjust, that is his loss. Men are indifferent to the Stoic, however, only in the sense that their doings cannot affect his will, nor therefore what is essentially good or evil to him. But, says Marcus Aurelius, in so far as I ought to benefit and bear with them, they are the nearest of things to me. Virtue, though springing from the individual and resting on his personal wisdom and self-control, is eminently social in its manifestations. "Rejoice in one thing alone and rest in it, in passing from one social action to another social action with mindfulness of God." If the expressions of Stoicism are often hard and lend themselves at times to a certain appearance of heartlessness and isolation, in the gentler handling of a spirit like that of Marcus the social side becomes the dominant feature, and we learn that if a man is to ask nothing for himself, yet he is gratefully to acknowledge every good gift that he receives from all around him, and to be willing to give his all to others.[1]

---

[1] Similarly in social intercourse, Epictetus, who represents the more rugged side of Stoicism, bids us prefer goodness to every other consideration. "I have nothing in common with my father but with the good man." "Are you so hard?" "Yes, for so I was made. . . . For this reason, if the good is anything different from the noble and the just, father and brother and country and all things are gone" (Epict., iii. 3. 5).

10. But it was not so much the gentler social virtues as the fundamental obligations which bind man to his fellows that interested the Stoics. Deep as was the mark left on the world by their self-containment, it was not the greatest or most lasting effect of their teaching. It was at the point where moral philosophy touches the theory of law and government that their influence was widest and most abiding. For it is to them more than to any other school of thought that the world owes the conception of an ethical ideal standing above the wills of legislators, whether despotic or popular, as a standard to which they ought to conform. This ideal took shape in the conception of a Law of Nature which stood above all human conventions and held up a standard to which state law ought to conform. The conception of Nature was not introduced into Ethics by the Stoics. We have seen that at the outset the fundamental problem of conduct was raised in the form of the question, "Are justice and the other virtues natural or merely conventional? Are they founded on nature or the products of human agreement, which may be relegated at will to the lumber-room of disused ideas?" We have seen how Plato undertook to prove that they were founded on nature, and did so by showing that they rest on the constitution of man and of human society. So far "nature" appears as the basis of morals. In Aristotle it begins to serve as a standard of custom. At least in regard to justice, Aristotle recognized that there must be some more ideal and scientific standard than that embodied in the written and unwritten law and custom of the Greek states. Rules of justice as embodied in law were changeable and varied from place to place, while that which is natural is the same everywhere. But though natural laws change, says Aristotle, there must be one state, one constitution, which is everywhere natural—namely, that which is the best: and there must be one set of laws everywhere natural—namely, those which the best state would adopt. But the law of nature, after all, is an incident in Aristotle's treatment of justice; with the Stoics it becomes the central principle.

---

[1] In the above references to Epictetus and Marcus Aurelius I have freely used Mr. Long's translations, without, however, always adhering to his words.

It appeared to supply, and in its degree it did supply, that systematic conception of a moral standard in which they found earlier theories lacking. For if the older thinkers had taught that man's true happiness lies in the practice of virtue, they had given little attention to the question why certain classes of action are considered virtuous. They took over in the main the current ideas which they found as to the particular virtues, idealizing and sometimes supplementing and correcting them, no doubt, but not upon the whole seeking for any first principle by which the value of these traditional rules might be tested. Now such a principle the Stoics conceived that they had found in the law prescribed by Nature itself to man. This could be discovered—such, at least, seems to be the implied process of thought—by considering how far the rules of conduct which we actually recognize are due to human institutions, and what would remain if we conceive them done away with. Proceeding on this line of thought, for instance, it is easily recognized that such an institution as slavery is not "natural." It is an institution of men, for without such institution who would enslave himself? So again with all other inequality of rights. By law one man may be given privileges over another, but take away the law and what privilege could remain? On the other hand, if we consider such a matter as the fulfilment of obligations, the obligation itself, we may say, is the result of a compact made by men, yet we feel in ourselves a "natural" impulse to fulfil it, even without legal compulsion, and so to keep our contracts is a part of "natural" law. Reasoning on such lines as these, from their conception of Nature as one Kosmos, animated by One God, the father of all mankind, the Stoics arrived at the idea of a Law of Nature prescribing the freedom, equality and brotherhood of mankind, overriding all distinctions of class, and race, and nation, prescribing good faith and mutual obligation, even when there was no law. This was no empty theory, but an active principle, influencing the practical legislation of the great Roman lawyers.[1] The freedom, equality and brotherhood of man, the inherent injustice involved in distinctions of class and of nationality, the original sanctity of contracts, and, as a consequence, the recognition of moral obligations to those to whom one is bound by no law—such ideas as these originate with the conception of a law which Nature lays down for man, and is, therefore, independent of convention and superior to the enactments of kings. We have already seen the influence which this conception had in mitigating the hardships of Roman slavery. We trace it in the successive extensions of the franchise, which broke down the barriers between conquering Rome and the subject provincials. We may trace it once more in the humane laws which broke up the barbaric supremacy of the paterfamilias. Indeed, "there were few departments into which the catholic and humane principles of Stoicism were not in some degree carried." In the mind of the best of the emperors, Stoical principle kept alive the ideal of a "constitution of equal laws ordered in accordance with equality and equal freedom of speech, and a kingship honouring above all things the freedom of those who are ruled." Such an ideal was unattainable in the second century after Christ, but that it should have been placed on record by the absolute master of the Roman world as his conception of the principle by which he would govern himself, is not the least remarkable testimony to the strength of the Stoical creed. The law of Nature was not, as we shall see more fully, in the end an adequate formula for the moral standard, but it was a step in that direction. It was an assertion that such a principle could be found, and it recognized that actual codes deviate from the principle in consequence of what is arbitrary and accidental in the laws of their growth.

---

[1] See quotations from the stoically trained jurisconsults in Lecky, *History of European Morals*, i. 295, 296.

Greek ethics thus bequeathed two great contributions to the solution of the ethical problem. In its earlier stage it founded moral obligation on the well-being of the individual. It taught that virtue was not an emptying but a fulfilment of the personality. It reconciled individual self-development with legal, law-abiding citizenship in a free city state. In its later stages, when the old civic life was breaking up and the problem taking new shape, it laid the foundations of a universalist ethics by conceiving an ideal standard of conduct applicable to all mankind, not subordinate but superior to state law, an ideal to which social as well as individual custom should be made to conform. In neither of these directions, however, was its analysis final. How it was pushed further by modern thought we have now to inquire.

CHAPTER VII

MODERN ETHICS

1. The tradition of Greek ethics did not wholly disappear with the decay of the classical civilization. In part it was incorporated in Roman law, and if buried with it for a time, shared in its revival from the twelfth century onwards. In part it coalesced with the leading ideas of Christianity, and was made subservient to the exposition of Christian doctrine. Particularly, as we shall see more fully later, the idea of a Law of Nature has a continuous history from the "common reason" of Heraclitus and the "natural justice" of Aristotle, through the Roman jurisprudence and the Canon Law to Grotius and Hobbes, and from them to Locke and Rousseau. Modern Moral Philosophy starts with the wisdom of the Greeks as its working capital. But from the first it had to deal with a more complex situation, a more tangled conflict of claims upon the conscience, a wider apparent fissure between the individual life and the social order.

The rise of a world religion, with claims on the spiritual life which were by no means easy to reconcile with any political authority, resulted in mediæval Europe in a separation of the Spiritual and Temporal powers and the erection of distinct and frequently opposed authorities, each claiming the strict allegiance of the individual. The Reformation threw these two powers in many countries into prolonged and violent antagonism, and the problem of conflicting duties to king and country on the one hand, and to Christ and the Church, or to God and conscience, on the other, was raised in its most acute form. Such a conflict could leave neither political nor spiritual authority unimpaired, and where the Greek philosophers had something to appeal to which all men were in a measure ready to recognize in the state and the traditional laws and customs which the state maintained, the first problem of modern philosophy was to find a higher authority to which either State or Church might appeal. There could no longer in thinking minds be any question of accepting either of the rivals as ultimate and supreme arbiter of right and wrong. Thus deprived of an unquestioned external authority, men were thrown back, in the first instance, on their interpretation of the revealed Word of God, but as the principal conflict had turned from the first on questions of interpretation, and as experience had shown how the plainest meaning could be wrested into an ambiguous sense or the most categorical mandate erected on the basis of a forced interpretation, it was plain that revelation alone could supply no single and unquestioned standard whereby doubts might be removed. Hence the logic of facts drove men to the admission of private judgment, and the decay of a universally recognized authority forced the thinker to fall back on the individual, and to find in his conscience, his instincts, his reason, possibly in his merely selfish necessities, but at any rate somewhere in his "nature" as a human being, a point of departure for theories of moral conduct and the social order.

This was in a sense to repeat what the Greek thinkers had done when they found a basis of political order and social justice in the moral nature common to all human beings. But the whole historical situation made it impossible for modern thought to offer so simple a solution as that which had satisfied the Greeks. The conflict between law and conscience, public authority and private judgment, had been raised in too acute a form. The Greeks might be satisfied with the proof that, man being a social animal, his duties as a citizen were a necessary part of the life that was best for himself, and so conclude to a close identification of private and public welfare. But to the modern it was not merely self-interest, but conscience which often clashed with authority. While to the Greek there was one form of political association which was obviously best, to the modern, particularly at the period of the rise of modern ethics in the seventeenth century, it might be said with more truth that there was no form of political association open at all, but only submission to some form of political despotism. The corporate life of the Middle Ages was everywhere in an advanced stage of decay. Political virtue meant for the many, not "the capacity to rule and be ruled with a view to the best life," but submission to the powers that were. The process of erecting a true commonwealth under modern conditions had not passed the experimental stage, nor had the experiments been wholly encouraging. It would have been to assume too much to lay down that public and private well-being were two sides of the same thing. It had to be recognized that the individual might have a life of his own, and that both from interest and from conscience he might have motives bringing him into conflict with the interests of state as interpreted by the ruler.

Thus the antithesis of the individual and society was more deeply cut than in the Greek days. The claims made by the moral law were more exacting, and in some measure consisted in ideals to which the mass of men have never been brought to render much more than lip service. It was one thing to agree that true well-being for the individual lay in the exercise of qualities which all really admired, and outside the discussions of the sceptic's lecture-room treated in practice as the essential equipment of a gentleman. It was quite another thing to proffer the same justification for duties which few in their hearts regarded as more than formulas which might mean something to an anchorite, but had little living relation to the affairs of ordinary life. Not only is the modern moral code harder, but modern life is more complex and its ramifications more widespread. Political duty, to instance a single point, may impose on the citizen of a great kingdom, and still more on one of a world empire, consideration for those whom he never has seen or will see, and the kind of political virtue so called upon is far more difficult to evolve and sustain in active being than the public spirit of a compact community where every one knows his neighbours, and the consequence of a public wrong falls at once and manifestly, if not on the very men who have voted for it, then on neighbours whose sufferings they actually witness. Thus it is owing partly to an advance in thought, partly to a change in the ethical situation, that in modern philosophy the Greek antithesis between the real and the apparent good, the choice respectively of reason and desire, deepens into the opposition of duty and interest, and morality presents itself, not so much as a source of happiness which every enlightened man must eagerly choose for himself, but rather as a law imposed on human nature to the cheerful performance of which it may by an effort attain, but which compels by authority, rather than appeals by inherent attractiveness. Duty and self-sacrifice become central conceptions of ethical theory. At the same time, since conduct cannot have moral worth unless it is unconstrained, the sanction of this law had to be found within human nature itself, and even in a sense within the nature of each individual, who must at least adopt of his own choice the law by which he is compelled uniformly to consider other interests than his own and may be constrained to sacrifice all that is dear to him. Thus the modern world has the ancient paradox before it in a yet sharper form. For though it may be said that true well-being lies for us, as for the ancients, in well-doing, and though this solution is occasionally brought up afresh, yet it fails to the modern mind to be more than a re-statement of the problem to be solved, since that well-being which was an undivided conception for the Greeks has been analyzed for us into the Happiness which a man experiences within his own consciousness, and the excellence which another may praise and admire in him, but which may have brought him a heavy balance of sorrow. For similar reasons the Greek axiom that every man seeks the good, though useful in its place, can hardly avail to solve an antithesis which derives its whole point from the frequent conflict of moral goodness with the good things for which our nature craves.

2. Thus modern systems have moved between the poles of an authoritative moral law and an unconstrained self-direction of human nature, and the attempt to suppress either term of the antithesis brings about its Nemesis in the movement of thought. The ball is set rolling by Hobbes, in whose system the element of law, identified here with state law, becomes merely derivative. By the "law of nature," as we find it at this stage, each man seeks his own preservation, but since in the correlative "state of nature," where every man's hand is against every man. the life of all is or would be "solitary, poor, nasty, brutish, and short," men agree together tacitly or expressly to confer the plenitude of their natural rights upon a king who shall rule over them and keep them from mutual wrongs. This is the social contract which men make and maintain, each for the sake of his own preservation, since its persistent breach would reduce society to primæval chaos. Thus, in the name of the Law of Nature, Hobbes reduced morality to egoism as its ultimate basis. But in so doing he provoked the retort that his account of our nature does not correspond with the facts, and a succession of writers lay stress on the several social elements in human nature, while Butler, the form of whose theory is still determined by the questions set by Hobbes, elaborates a complete theory of the natural constitution of man in which conscience is, by the very law of the constitution and with the approval of self-love itself, established as the authoritative guide. Yet Butler in the end fails doubly, not only because he has no provision for the actual variations in the deliverance of conscience, but also because, with a backwash of feeling from the currents of the time, he ends by admitting self-love to a supremacy which would be fatal to his whole argument if he had not future rewards and punishments to fall back on. But to fall back on the supernatural was, in effect, to abandon the position and leave the way open for other lines of thought.

The most vigorous of these, in England, was the attempt to conciliate the egoistic and social sentiments on the lines of what was later known as Utilitarianism. Partly through the analysis of moral judgments (as in Hume's *Enquiry*), partly by the analysis of desire (as in Hartley and the Mills), the position was reached that the good is universally the pleasurable. But on this at once arose the fundamental question, Whose good and whose pleasure are to be considered? Mine by me and yours by you, or that of all men by both of us? In this statement of the question the antithesis of duty and interest was resolved into that between others and self, and assumed a particularly acute form. For the psychological proof that pleasure is the object of desire pointed to egoism. It was my pleasure which my desire was supposed to contemplate. But the thesis that the pleasurable is the good, once granted, was applied to society as a whole. The happiness of all men was laid down as the standard of action, and its promotion urged (as by the younger Mill) as a duty. The reconciliation between these somewhat contradictory positions was sought in the sympathy and social feelings of mankind whether natural (Adam Smith) or built up on a more egoistic basis by a process of association (Hartley and James Mill). Through these feelings a man might come to identify his pleasure and pain with those of others, and deliberately sacrifice all purely personal happiness for the pleasure of serving his fellow-men, or to avoid the pain of remorse consequent on a betrayal. Taken at its best, however, this explanation gives no adequate account of rational obligation. It may be said to show that self-sacrifice is possible, and to offer an account of how the feeling of duty arises in the individual; but it does not make clear in what precise sense we can tell the man whose sympathies are not sufficiently developed to make him prefer another's happiness to his own, that he "ought" to do so, that this is his "duty," to perform which is "right" and to neglect it "wrong." Do these terms simply mean that this is the course of conduct which we prefer and which, if he felt as we do, he would also prefer, or do they mean that the more social conduct is intrinsically preferable whether he or we happen to prefer it or not?

If with the last of the great Utilitarians we adopt the latter view, we impinge upon the line of thought which in the form at one time of Intuitionism, in another of Rationalism, has run its course throughout modern philosophy from the Cambridge Platonists to our own day. We need not here refer to earlier phases of this form of thought, for rationalism took upon itself a new being in the Kantian theory. To the conception of morality as a law Kant gave the strongest expression that it has ever received. For him the very assertion of a moral judgment implies the existence of a law binding on all men as such, irrespective of persons and of consequences, and duty is duty only when done for the fulfilment of this law and for no extraneous motive. But again, since in morality man must be free, it is only man himself who can impose this law upon himself. He is at once sovereign and subject, sovereign as a rational being, a member of the spiritual world, which underlies phenomena; subject as a phenomenon existing in time and space, conditioned by those categories of substance and causation by which alone a phenomenon can exist. As rational he prescribes to himself a law which, as a being in the world of sense, he may obey or disobey. If he were pure reason, he would conform to law without effort and be perfect. If he were pure sense, he could know no law. Partaking of both natures, he is a responsible being, the subject, but not always the obedient subject, of a moral law.

In defining morality as law and in making it a law set by man to himself, Kant is in the centre of modern ethical thought. But the peculiar setting of his doctrine was in part determined by the transitional character of the Kantian metaphysics, and in part by certain exaggerations natural at the outset in the statement of all that a law implies. Kant's critics have pointed out, for example, that a rational law cannot disregard circumstances or consequences, as Kant would have it do. On the contrary, if the practical reason in man meant anything, it meant a capacity to be guided by ends and to direct action thereto, and ends could not be served without taking changes of circumstance and all manner of consequences into account. Hence, if there was to be a rational law binding on all human beings as such without regard to any extraneous considerations, it must be a law binding them to permanent regard for some universal end. Again, those who stand nearest to the direct line of descent from Kant in modern Ethics admit that Reason was misconceived when it was placed in fundamental opposition to every emotional impulse. Reason, on its practical as on its theoretic side, is that which makes for coherence, connectedness, harmony. It forms experience into a connected whole, and it condemns as irrational only that idea which will not fit into the whole. On the ethical side it is that which makes for unity and coherence among the different and often jarring elements of our nature, and it is to be understood accordingly, not as an authority above and outside all feelings, emotions, sentiments and whatever else may impel us to action, but as a principle working within them towards harmony. If under the name of feeling we include all the interest we take in action and the ends and outcome of action, then reason undoubtedly rests on a basis of feeling; but while as irrational beings we feel things imperfectly, confusedly and inconsistently, so as to be led hither and thither by the stress of impulse, the work of reason is to gather up all feelings into one steady movement of will-power, to give them unity or at least consistency of direction, and so achieve for us a life that is at one with itself. Such an order is a rational order, because its component parts, instead of conflicting, support and further one another.

If the work of reason could be so completed that every impulse within us fitted in of itself as part of such an order, we should have what Kant called the perfect will and the sense of duty would cease. But because the work of reason is never complete our nature is never wholly at one with itself, there is strife within us. In part our impulses are harmonized and set in one definite direction, and it is here that we feel that our true self lies. In part they still rebel and chafe against their limits, and then arises the feeling of constraint and of moral obligation. Thus our nature in a sense lays a law upon itself, and this law is a rational law, and yet its foundation is in feeling and its purpose is the satisfaction of the permanent bent of our nature. These and similar criticisms urged by the Idealist thinkers who claim descent from Kant fall into line with the metaphysical criticisms by which they sought to overcome the dualism of the Critical philosophy and to depict the entire process of things as a working out or realization of Spirit. In this way of thinking the familiar ethical antitheses tend to be regarded as apparent rather than real. The opposition between duty and interest or reason and desire is resolved into that between the real and permanent self and the illusory or temporary impulse. The very distinction between self and others disappears in the conception of a Universal Self which is the underlying reality of each, and whose movement towards realization constitutes the World process.

Apart from metaphysical controversies, the ethical rock lying always in the track of this movement of thought is the idea of Personality. Idealism sets out to overcome the separateness of individuals, but often seems to be only too successful, and to destroy what it ought to explain. Philosophy, then, has still to find a satisfactory method of stating the theory of moral obligation in terms which do full justice at once to individual personality and to the spiritual unity which binds men to the service of the common good. I will endeavour to state as briefly as possible the conclusion to which, in my own view, the course of thought, as shown in the considerations here just touched upon, seems to point.

3. As to the general conditions of the problem, any theory which recognizes an obligation in ethics must admit that there are actions which, if a man does not perform them with his whole heart, he yet feels constrained to perform. So far we have obligation as a psychological fact, explain it how we may. But further, a rationalist theory of ethics maintains that this constraint, to be of a "moral" nature, must be quite distinct from any pressure of external sanction, *i. e.* it must proceed from human nature, and so, as Kant showed, be imposed by each man upon himself. But none the less, thirdly, if it is to be something more than a psychological fact—a mere expression for the ultimate preference for one course of conduct over another—it must also be "objective," *i. e.* it must hold good for you and for me whether you or I ultimately acquiesce in it or not. It is the *primâ facie* opposition of these two last points which constitutes the apparent paradox and the real difficulty of moral obligation. The moral law which I recognize must be something which I adopt as a law binding on myself, and in that sense subjective. Yet it must be a law which binds me, even though I do not adopt it, and in that sense objective.

The Greeks formulated this problem in the shape of the contrast between my own good and that of others (the *ἀλλότριον ἀγαθόν*), and solved it (Ethics, ix. 8) by the thesis that my real good was the good of my real self, that this was the reason that is in me, and that reason might tell me to sacrifice the apparent good which lay in the satisfaction of my lower desires and satisfy my real self by serving others. In sum, in morals as in all conduct I seek my own good, but as a moral man I judge truly that my good is to secure the good of others. The Kantian solution starts from a similar antithesis of reason and desire, but rests on a profounder analysis of the moral judgment and of the whole distinction between the objective and the subjective. To Kant, morality is subjective in that it is a law which I freely adopt as my own, which proceeds therefore from my own nature. It is objective in that it expresses a rational order which I apprehend as a rational being, and which I disobey only when and in so far as I am also an irrational being. The principle underlying the solution is the peculiarly Kantian thesis that the objective is the rational, and, if this principle be admitted, the antithesis between subjective and objective ceases to be an antithesis between something that proceeds from within and something that proceeds from without. The contrast which the terms henceforward express, lies between that which rests on the caprice, the inclination, the erroneous or partial judgment of the individual, and that which must commend itself to all men in so far as they are guided by the rational element within them.

The problem, then, being re-stated, the question whether morality can be regarded as a matter of obligation resolves itself into the question of finding rational grounds for the moral judgment. Now if we seek for such ground outside the moral order we are at once convicted of the attempt to find a non-moral justification for morality. The rationalist, then, who stands by a moral obligation must seek it in the content or character of the moral order itself. He must ask himself whether the moral order is a rational order, and he must determine the question by applying the same tests of rationality which he would use in any other intellectual problem. It is, indeed, objected to this test that the moral judgment does not, like the judgment which relates to the physical order, state a matter of fact, but rather imposes a command. We might accept the objection without fundamentally altering the test to be used. For orders issued may be intelligible or unintelligible, consistent or inconsistent. We can compare them one with another and see how they stand when regarded as a totality, and, as we shall clearly see when the tests of rationality are passed in review, we can apply these tests to them as readily as to any other body of thought. But further, the rationalist will not wholly admit that the moral judgment merely issues an order and does not state a truth. On the contrary, it either asserts or implies that one course is "right," or "good," or "better" than another, and in so doing it appears to be founded on real relations of things, and as such subject to the test applicable to all judgments which claim to be valid and to deal with reality.

Now the validity of any judgment can only be tested or measured by another judgment independently formed but bearing on the same point. If the first judgment is corroborated by the second, we, so far, consider it valid. Now the second judgment in turn may demand corroboration. No final test of validity can be attained until we have exhausted all the points of view from which a given order of reality can be approached. At this point the system of connected judgments so formed is valid, not in view of any further judgment founded on some outside source, for *ex hypothesi* no such outside judgment remains to be formed, but in virtue of its internal coherence. Thus the validity of a single judgment depends on its place within a system of judgments, the validity of the system on its internal coherence, the fact that it is built up of judgments which not only do not conflict, but maintain and necessitate one another. Final truth in such a system could only be claimed with perfect assurance if we knew that we had exhausted all the points of viewing the order of reality with which we are dealing, and this is why final truth is not attainable by man. But the most complete truth which man can reach lies in the most comprehensive system of coherent thought which he can construct, and the way of reason lies always in the effort towards such a system, and of unreason in the adoption of beliefs which conflict with one another and cannot be reduced to a harmonious order.

Reason, then, generically is the impulse towards a coherent whole, and it takes any partial judgment as an element which must be assimilated by the whole before its final truth can be established.

Now what is Reason on its practical side? When we deem a thing good or bad we are making a judgment and even asserting a fact. But that fact at bottom is a preference. I do not seriously think a thing good unless I prefer it to what is indifferent or bad, and such a preference involves not a mere cognitive or detached intellectual state, but an attitude which may be called one of feeling, using the term feeling as a general name for whatever prompts, maintains, arrests, or re-directs effort, or, if conditions either frustrate or do not require effort, expresses itself in emotion or in simple enjoyment or suffering as the case may be. Good and bad are terms for objects of experience about which we feel. The good object is, as such, and apart from incidental counteracting causes, one in which we find pleasure and one which we seek to produce and maintain as long as the pleasure lasts. There is here a harmony—that is, a relation of mutual support between the object and the feeling, for the feeling is maintained by the object and also gives rise to the effort to maintain and complete the object. Conversely, where there is pain there is disharmony, the effort here being to the arrest of the experience, and removal or destruction of the object. If there were in existence only one consciousness with only one object of pleasure its efforts would be solely directed towards the maintenance of that object and the removal of all else. But there are many objects of pleasurable and painful consciousness, and between them there is often a practical inconsistency, the conditions which produce pleasure in one relation producing pain in another. Now the rational impulse is as intolerant of this practical inconsistency as of theoretical inconsistency. On the practical side, accordingly, it is the impulse towards a harmony of feeling which should make life one in its purpose, just as on the cognitive side it is an effort towards a harmony of judgments making thought one in its principle. Practical reason, then, may be simply defined as the basis of harmony in the world of purposes. This harmony is no more to be achieved without a re-modelling of impulses than consistency of thought without a re-casting of judgments. For (*a*) my own purposes may conflict with one another, and (*b*) any or all of them may conflict with those of another person. All such conflict exists for the practical reason only as an obstacle to be overcome, just as contradiction exists for the speculative reason only as a difficulty to be resolved. It makes no difference whether the conflict is due to difference of persons, of communities, or merely of tendencies within one mind, for the reason is no respecter of persons or of anything partial except so far as it can be brought into a harmony of the whole.[1] This harmony has behind it the sum of all the driving force of feeling, impulse, will, which it has brought within its scope, and its authority is independent of the concurrence of any particular impulse or any particular person because it is rationally established, and has already given to the objection such weight as in an impartial regard to the whole system of purpose is its due. It is objectively valid in the sense in which this term can be applied to purpose, *i.e.* in the sense that it is rationally established. Now the plenitude of such authority could only attach to a completed system, but as in knowledge, so in action, the rational impulse is authoritative against any counter impulse although its results are incomplete, and the individual is therefore under obligation to the working code that it has produced except in so far as he can point the way to a fuller harmony.

---

[1] For want of recognition of its universal character the practical reason is too often identified with prudence and so with egoism. The reason is here thought of as a purely intellectual process of the adaptation of means to ends, and the ends are conceived as determined by personal desires alone. This view ignores the elements of impulse-feeling which connect every man but an idiot directly with some others and potentially with all others, and missing the character of practical reason as an impulse it also fails to grasp its aim, which is to unify not my purposes or yours, but all purposes. In this impulse all that tends to bind humanity—we may even say the sentient world—into one is summed up.

Conversely, the unity of the world of mind is generally conceived as something mystical. The truth is that its binding thread is just practical rationality, including therein all the elements of emotion and conation that go to make up the rational impulse.

4. But in what sense would it "bind" him? This is generally taken as resolvable into the more precise question, "What will befall him if he ignore it?" Accepting the question in this form, let us from the outset insist that this consequence is not essentially or universally a loss of personal happiness. Admitting all that can be said of the pangs of remorse and the blessedness of martyrdom, we should still be, to say the least, unwise to stake anything on the possibility of proving that a loss of conscious, realized happiness attends every fall from virtue or refusal of duty. We may, if we please, maintain that it is well with the man who does his duty to his worldly loss, and ill with him who rejects it, but in speaking confidently on the point, we can only be judging them from outside. We are measuring them by that standard of merit to which we think men should conform, to which we ourselves wish to conform. We are not judging by the conscious happiness or misery which the two men experience, for we have no means of deciding with certainty what that consciousness is. If, indeed, we assume both of them to be animated alike by this same desire to conform to the rule of human duty which our judgment on them postulates, then we may impute those feelings of inward peace on the one hand, and lasting remorse on the other, which we know to be in average humanity determining factors in the balance of happiness and misery. But suppose that we have to deal on the one side with a conscientious soul much tried and often sore bested in the race, and on the other with a consciousness which gradually, perhaps half deliberately, blunts its moral feelings and loses the sting of shame. We may say with confidence that the second is a lower type, but we cannot with equal confidence assume that it experiences more unhappiness. Indeed, the probability lies in the opposite direction, and if, nevertheless, we persist that if we had to choose we would prefer for ourselves the former character, we do so on the ground that something other than our own happiness is the motive which does and should move us, and that it is better to be half a hero and miserable than a whole-hearted brute, satisfied with brutishness. Such a conclusion is, in fact, held in germ in the bare conception of a moral obligation that is not merely a superior and more exact calculation of the elements of personal happiness and misery. In

our thinking on this subject we are too often tempted to get the best of both worlds, to claim superiority to all selfish considerations when insisting boldly on the supremacy of the moral law, and then, by an elastic interpretation of happiness, to make terms with prudence and insist that even from this point of view the faithful servant of duty is proved wise in his generation. We are aided in this double feeling by phrases and turns of thought which enable us to identify Happiness and the Good. These terms are, indeed, closely related. We find happiness in conscious realization of the good, but we may attain the good without knowing it, or we may strive towards a supreme good at the cost of pain and misery which in the actual measurement of conscious feeling would probably far outweigh such satisfaction as our poor onward efforts may bring. Once admit and resolutely adhere to the admission that happiness is a condition of our conscious life, and we bring clearly into relief the truth that the ethical conception of the good carries us beyond our own conscious being and forbids us to look for a reward there.

This deduction fairly faced, we come back to the conception of obligation as resting on the relation of self to others, or more broadly, on the position of each man as a member of the great whole in which, insignificant part as he is, he has his function to perform. It is that in him which answers to this position which realizes, however dimly, the nature of the whole to which he belongs, which drives him on and impels him even through the wreck of his own happiness and the ruin of his personal desires to play his part. In a perfect human being, indeed, all such conflicting desires would be overcome. If we imagine the reason within a man finding a perfectly rational order of ideas to guide it, and responding by carrying its own work of re-moulding impulse to completion, we should have a character in which every impulse would of itself fit into an ordered whole. For such a being no satisfaction could be found outside the performance of the duties falling to his lot, and thus for him the antithesis of happiness and duty would be overcome. We do not find this perfection in real life, but we find the mirror of it, or rather a fragment of it, wherever there is love. For here, too, happiness rests in service, and there can be no joy in satisfaction gained at the expense of the loved object. Hence the few men gifted with the genius of love which enables them to feel for mankind what ordinary men feel for wife or child, have always stood forth as the teachers capable of inspiring the world with a new gospel. In ordinary humanity we do not find the perfect adaptation of the impulses to the service of the whole. But neither do we find outside the asylum a reign of purely anarchic impulse. There is a movement towards harmony which gives a certain general direction to our lives, and which has within it all the gathered-up forces of the impulses which it has brought into a synthesis. The pressure of this system on any impulse that conflicts with it is what we feel as obligation. This system may, of course, be formed on narrow lines and then it only leads us astray, but so far as it is the work of the rational impulse it tends to bring each of us into harmony with the world of life about him. The adaptation in the perfect state in which all emotion is attuned to it is experienced as love; in its incomplete state, when the system has to maintain itself with effort against unreconciled elements, as duty. Finally, the constraint which it so exercises is one that we recognize as just and valid in proportion as we are reasonable beings—that is, in a word, the obligation is rationally justified. This implies that man is bound by spiritual ties to a community with a life and purpose of its own. But the tie is not such as to destroy his separate personality, but rather such that, like Love, it maintains the distinctness of the persons whom it binds together, and hence, though the whole to which he belongs may be called a spiritual whole, it is only by metaphor a self or a person. More strictly it should be a Spiritual whole in the true conception of which Personality is a subordinate element.[1] If this conclusion is correct, the problem of finding the principles of a rational moral order resolves itself into that of formulating the nature and supreme purposes of the whole to which man belongs. To the efforts made by modern thought in this direction we must now turn.

5. Here, once again, modern thought starts with the idea of "nature." The conception of a Law of Nature binding on man as man had been adopted by the Church, which extended the conception by adding to the principles implanted in human nature itself those revealed in Holy Writ. These two sources of law are set forth at the outset of the Decretum Gratiani as together distinguished from the positive law of states.

"Humanum genus duobus regitur, naturali videlicet jure et moribus. Jus naturæ est, quod in lege et evangelio continetur, quo quisque jubetur alii facere, quod sibi vult fieri, et prohibetur alii inferre, quod sibi nolit fieri." [2]

---

[1] Here the term super-personal, employed by some idealists, points in the right direction.

[2] Decr. Grat., *C. J.* 1.

This is an ethical rather than a juristic principle. What follows corresponds better both to the ancient and modern idea of "natural" laws.

> "Jus naturale est commune omnium nationum, eo quod ubique instinctu naturæ, non constitutione aliqua habetur, ut viri et feminæ conjunctio, liberorum successio et educatio, communis omnium possessio et omnium una libertas, acquisitio eorum quæ caelo, terra marique capiuntur; item depositæ rei vel commendatæ pecuniæ restitutio, violentiæ per vim repulsio." [1]

The just supremacy of natural over state law is asserted by Gratian, and the authority of Augustine [2] and other Fathers adduced in its favour. The same doctrine is maintained by St. Thomas, and the Law of Nature, which was destined to become the associate and leader of revolutionaries, entered upon the modern period with all the odour of sanctity.

But it was not till the decay of theological ethics had begun that it assumed any real importance. Monotheism had divided reality into the natural and the supernatural, and when the one began to lose authority men turned to the other as of course. The Law of Nature provided a basis for morals, a standard for law, and a rule of conduct where no law was. It was in the last capacity in particular that it emerged as a working factor in thought. The Reformation had torn Western Europe asunder, and so destroyed that spiritual headship of the popes which had provided some sort of common authority for the rival powers which it contained. The belief grew up that in international matters men were bound by no obligations whatever, and the belief was practically exemplified in the amazing horrors of sixteenth and seventeenth century warfare. The thinkers who sought to remedy an evil which had almost destroyed civilization in Germany, turned to the old antithesis between nature and human convention. They appealed to the conception of a natural law which all parties recognized, and which, being prior to political sovereignty, could be recognized by warring states without prejudice to their independence. Confining ourselves to Grotius as the most influential of the school, it is interesting to see how he conceives the Law of Nature. Combating the assumption that every animal seeks its own advantage, he lays down that there is in man (and even in some lower animals) an *appetitus societatis*, a desire for community, and that not of any kind but of a tranquil kind, ordered in a manner congruous to his intelligence. We find an impulse to benefit others among certain of the animals and in infants anterior to any education. This social tendency is the fountain of natural law to which belong the obligations of "abstaining from what is another's, restitution of deposits, fulfilling contracts, reparation for culpable injuries and administering due punishment."[1] Further, since fulfilment of contracts is a part of natural law, and since a compact is the foundation of society, natural law is indirectly the source from which state laws flow. Lastly, though natural law would have force even if there were no God, or if He were indifferent to human things, in fact all Christians believe that He will punish disobedience to His law, and natural law, though it proceeds *ex principiis homini internis*, is still ultimately ascribable to Him as the fashioner of human nature.[2] Natural law, then, was something based on the nature of man as such, independent, therefore, of the whims of kings, nobles, or majorities, no respecter of the national boundaries or of any other differences that part groups of men, binding even on sovereign powers.

---

[1] Decr. Grat., *C. J.*, 2.

[2] In the passages cited Augustine seems to have "divine" rather than "natural" law in view, but they are treated as the same by Gratian (see pp. 13–16).

In elevating human personality above social convention and making its essential attributes tacitly, if not expressedly, the groundwork of political obligation, the law of nature was one way of formulating the most vital tendency in modern ethical thought. Moreover, it appeared to provide the fixed standard which in the decay of the supernatural was required by the ethical thinkers. But in this respect its promises were in large measure delusive. What precisely was natural was, and always has been, hard to say. If it was open to Grotius to maintain that man was naturally social and the fundamental laws of society were deductions from the law of nature, it was also possible for Hobbes to assert that man was by nature selfish, and that no social law could be produced from human nature if it were not for the fear that men entertain of one another. The Canon Law might lay down that by nature all things are in common, while Grotius and Locke would agree that respect for others' property was a natural law. In one sense everything that occurs is natural and everything that men do arises out of human nature, and if that view is pressed the whole difference between the natural and conventional disappears. Government is natural, even the freaks of a fashion are natural. It is certainly in human nature to tyrannize and domineer quite as much as it is in human nature to respect the equal rights of another. In this sense clearly nature means too much to be of any value as a term in ethics, but if, on the other hand, the permanent and fundamental conditions of human nature are meant, the question arises how the fundamental is to be distinguished from the accidental and temporary, and the use of the term natural itself provides no test. Lastly, if natural means the ideal, the term which is really wanted when we speak of a standard by which laws and customs are to be renovated, then the canon of what always has been is insufficient for our purposes in so far as the natural falls short of the possible, and we could only identify the natural and the ideal by making unhistorical assumptions as to a state of nature in the Golden Age, which can do nothing but mislead

---

[1] Grotius, Prolegomena, 5–9.

[2] *ib.*, secs. 11, 12.

In regard to the "natural rights" of man, definiteness was given to the doctrine by the complementary theory of social compact. Certain primary rights belong to a man as a human creature, and not merely as a member of society. They are regarded rather as attributes in individuals than as elements in a social system. Society is founded upon a contract whereby individuals yield up a portion of these rights in order to secure mutual aid in enforcing those which they retain. Thus, while political or legal rights flow from the constitution of society, natural rights are the unexhausted residue of the original stock with which men are endowed. So much is common ground to upholders of the social contract from Hobbes to Rousseau and Paine, though they differ as to the conditions under which the contract was formed, and to the extent to which and the form in which the barter of natural for civil rights was effected. The general theory is very clearly stated by Paine.

> "Natural rights are those which appertain to man in right of his existence. . . . Civil rights are those which appertain to man in right of his being a member of society. Every civil right has for its foundation some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent. Of this kind are all those which relate to security and protection." [1]

From this principle it follows that opposite deductions might be drawn, and in fact were drawn, as to the sphere and functions of government. It might be used, as with Hobbes, to support despotism; or, as by Locke, to prove that a king who does not keep an implied contract with his people may be dethroned; or, as by Rousseau, to prove the ultimate and indefeasible sovereignty of the people as a whole. This last conception underlies a good deal of modern political thought, and we must note what it implies. The conception of natural rights, then, leads in Rousseau's argument to popular sovereignty, because in the compact upon which society rests each man surrenders his own rights only in return for equal consideration in the decisions taken by the whole community. On the other hand, while the absoluteness of popular sovereignty is thus deduced from the doctrine of natural rights, it is limited by the same doctrine, for it may be held that in the exchange of natural for civil rights men do not part with all their rights, but assign some only to society, retaining those which are necessary to the inherent safety and dignity of the human personality. This point of view, in fact, underlies the Declaration of Rights by the French National Assembly. The theory is very clearly expressed by Paine. It is—

---

[1] *Rights of Man*, p. 306.

"First—That every civil right grows out of a natural right; or, in other words, is a natural right exchanged.

"Secondly—That civil power, properly considered as such, is made up of the aggregate of that class of the natural rights of man, which becomes defective in the individual in point of power, and answers not his purpose, but when collected to a focus becomes competent to the purpose of every one.

"Thirdly—That the power produced from the aggregate of natural rights, imperfect in power in the individual, cannot be applied to invade the natural rights which are retained in the individual, and in which the power to execute is as perfect as the right itself."[1]

The first six clauses of the Declaration of the Rights of Man show how the leaders of the French Revolution endeavoured to give practical shape to these ideas.

"1. Men are born, and always continue, free and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility.

"2. The end of all political associations is the preservation of the natural and imprescriptible rights of man; and these rights are liberty, property, security, and resistance of oppression.

"3. The nation is essentially the source of all sovereignty; nor can any individual, or any body of men, be entitled to any authority which is not expressly derived from it.

"4. Political Liberty consists in the power of doing whatever does not injure another. The exercise of the natural rights of every man has no other limits than those which are necessary to secure to every *other* man the free exercise of the same rights; and these limits are determinable only by the law.

---

[1] Paine, 307.

"5. The law ought to prohibit only actions hurtful to society. . . .

"6. The law is an expression of the will of the community. All citizens have a right to concur either personally or by their representatives in its formation."[1] . . .

We may sum up in a single sentence this expression of the creed in which the doctrine of the law of nature had culminated. Freedom, equal rights and security of person and property, limited only by considerations of public utility as determined by a sovereign people, this is the only moral basis of government. These principles insist upon the claims of human personality more fully than any previous ethical system had done; in so doing, and also, it must be granted, in placing a limit on the function of the state, they expressed a tendency with which the modern mind was, on the whole, in sympathy.

The state is thus conceived as having a sphere carved out of the original totality of rights in accordance with the necessities of the social compact. It figures as a necessary derogation from the plenitude of individual freedom—a necessary evil which, whenever it passes these natural limits, becomes a positive evil. The good the state can do is negative. It is the free individual on whom progress depends. In this conclusion yet another element in the conception of "nature" co-operated—the tendency to identify what is natural with what is best—a tendency which we find alike in the Physiocrats and in Adam Smith, and which was bequeathed by them to the economists of the first half of the nineteenth century. Not only had men a natural right to freedom in industry and trade, but the natural course of industry and exchange produced the best economic results. The industrial and commercial mechanism became perfect in proportion as it was allowed to run without interference from the central government. Under "natural" conditions, *i. e.* in the absence of attempts at collective direction, rent, profits, interest, wages, find their level. Any attempt to disturb this level produces a recoil, involving friction, waste and misery. Under natural conditions production finds for itself the course of greatest profit and least waste. The need that men have of one another makes them insensibly find the line of least resistance in their mutual dealings, and what that line will be none can tell for each individual so well as he himself. He moves precisely where his interest draws him, and to deflect him from the line of movement is to inflict on him and on others whose interests are involved in free dealings with him a net loss.

---

[1] From Paine's *Rights of Man*, pp. 351, 352.

Thus in various forms—now as a Universal Law, now as a Primitive State, now as the source of indestructible right, and again as a beneficent tendency of things—the idea of nature formed a setting for men's thoughts on social ethics. It lent itself with an elasticity that was all its own to the varying needs of successive thinkers. But so far as it had a fixed meaning in social philosophy, it expressed the antithesis to the deliberate action of governments, and thus it was well fitted to serve as a rallying point for the modern political movement, the object of which, put in the most general terms, was to substitute the state based upon consent for the *régime* of governmental authority based on force. The conception of nature was a useful lever in the demolition of the old structure of monarchical absolutism and feudal privilege, wherein government very readily appeared as something imposed on the mass of the community from outside instead of springing from their own "nature" within. For the most part it was only too true that the less such governments meddled with affairs, the better it was for the people concerned. It was true that the social structure which they preserved was not natural as resting either on the fitness of things or on permanent and insuperable necessities of human nature. Nor was it only the destructive side of the movement that the idea of nature expressed. In a dim and somewhat inarticulate fashion the term stood for fundamental conditions of human welfare, and in particular for the claims of human personality as independent of and superior to all legal and political obligations. Round the central conception range, as shown above (Part I., Summary), all the rights claimed by the modern man and woman, and those rights are one pole of modern ethics and of the modern state.

6. But when the question of the more precise definition of these rights arises, the limitations of the doctrine become apparent and the other pole of ethics comes into view. No right can be made absolute without threatening the destruction of society, and it is impossible to discuss the adjustment of any claims of the individual for many sentences without admitting a reference to the common welfare or some such principle. This is the point of departure for Bentham's criticism. The so-called Rights of man were, according to him, so many "anarchical fallacies." A man had a right to so much as was consistent with the general happiness, and no more. About the

cause of happiness and misery one can inquire and debate, and finally prove an opinion or disprove it. But as to rights men can debate endlessly and prove nothing.

"To any such word as right, no other conception can ever be attached but through the medium of a law, or something to which the force of law is given; from a real law comes a real right; from an imagined law nothing more substantial can come than a correspondently imagined right. Lay out of the question the idea of law, and all that you get by the use of the word right is a sound to dispute about. I say I have a right; I say you have no such right: men may keep talking on at that rate till they are exhausted in vociferation and rage; and, when they have done, be no nearer to the coming to a mutual conception and agreement than they were before."[1]

The argument could only be settled by reference to the higher principle of the general welfare, which both disputants could accept. If there is no *common* good which both admit, definable in terms which both can recognize, there is nothing to limit the possible claims of each. But the common good is, after all, a vague phrase. Could any means be found of so defining it as to make it an objective test of the right and wrong of action? Such means the Utilitarians (if the name may be applied retrospectively) conceived themselves to have discovered in the calculus of pleasures and of pains. The general happiness was the supreme end of creation. Happiness consisted positively in the consciousness of pleasure, negatively in the avoidance of pain. The goodness of a form of government, a social or political institution, a law, or a moral rule, might thus be submitted to a positive and objective test. Did it on the whole produce more happiness than misery? If so, it was good. Did it produce a balance of pain? If so, it was bad. Here was an objective test which a perfected sociological science (here the word must be allowed prospectively) might carry out into detail. In point of fact Bentham set himself to work out a theory of law and government upon that basis. But the first condition of any such undertaking was that rights should be reduced from their proud position. They were not fundamental and inviolable principles, but were means to an end. If freedom in any given direction promotes the general happiness—well and good. Men have a right to that kind of freedom. Let it be shown however, that such freedom tends to produce a balance of pain, and the right disappears. Rights, then, are related to the happiness of mankind. On the other hand, the two most important "rights of man" are, in point of fact, incorporated in Bentham's scheme. Equality, in fact, may be said to be its corner-stone—"Everybody to count for one and nobody for more than one."

---

[1] Bentham, *Securities against Misrule adapted to a Mohammedan State*, 1822–23, chap. i.; Works, vol. vii. p. 557.

"The happiness of the most helpless pauper constitutes as large a portion of the universal happiness, as does that of the most powerful, the most opulent member of the community. Therefore the happiness of the most helpless and indigent has as much title to regard at the hands of the legislator, as that of the most powerful and opulent."[1]

The thought here appears to be that happiness is the sole end of value, and that any person's happiness is of equal value with any other person's. As in Kant, impartiality between persons is the foundation of morality. Individual liberty was also well provided for. The close relation of private and general happiness was an essential part of the scheme. Whether by enlightened self-interest or by the cultivation of the social feelings men could come to identify their good with that of other people, and it was to this free choice rather than to any form of compulsion that the Utilitarians as a whole mainly trusted. On the other hand, since power in the hands of one man or of a few might be used selfishly, it was necessary that each man should have a share in determining the government of the country, and so the third of the great "ideas of '89" is reached by another path. There must be democratic government, not because popular sovereignty is a matter of absolute right deducible from the imagined character of a fictitious social compact, but because it is the only way to check the selfishness of rulers and so ensure the general happiness.

In this statement government is still tacitly conceived as essentially an infringement on the sphere of the individual, a necessary evil, the encroachments of which must be carefully watched. This attitude to government is not, indeed, essential to the Utilitarian principles, but it is characteristic of the phase of thought to which Utilitarianism historically belongs. In the Utilitarian method, society is still thought of in terms of "numbers" of people whose feelings of happiness and misery can be added and subtracted, rather than as a whole, in which the injury of any one part is apt to spread its bad influence through the body. With the same tendency, an even more vital defect is connected. To make general happiness the standard of law and morals was an immense advance in the direction of defining the moral idea upon the old conception of nature, and in Bentham's hands it could initiate a valuable and far-reaching series of reforms. Yet to make happiness the sole criterion, as though the kind of objective life in which men find happiness were unimportant, was a mistake which hampered Utilitarianism from the outset in accounting for moral obligation. Even if happiness were in theory the ultimate end, it was not sufficiently recognized—unless, perhaps, by the younger Mill—that the kind of life in which happiness is found is all-important. The happiness of one section, or of one generation, might be purchased at the expense of misery in the future, and if this was to be avoided and an intelligent view of the permanent conditions of happiness for mankind at large was to be obtained, it was necessary to make the laws of healthy social development the object of study and the direct standard of conduct. The direct application of the Greatest Happiness principle might be applied with success to the flagrant abuses with which the men of Bentham's day had to contend, but as more controversial questions arise and greater scientific precision is needed, the calculus of pleasures and pains becomes inapplicable. We cannot think out the value of action in terms of the indefinitely large number of persons affected. We do not know where to stop in taking consequences into account, and the thread of causation is lost as we endeavour mentally to follow it into the dim distance. If we are to trace social cause and effect with any hope of securing tangible and well-grounded results, we must therefore start from the other end. We must think of the corporate life of society and inquire whether it exhibits any laws of health, of growth or decay, and so far as we can ascertain such laws we may judge of the broad effects of conduct.

---

[1] *Const. Code,* Book I. chap. xv. sec. 7; Works, vol. ix. p. 107. Cf. Mill's *Utilitarianism,* chap. v. p. 92.

7. Thus on several sides the Utilitarian method needed to be supplemented by a conception of the collective social life of humanity emerging and maturing under conditions which it is the supreme object of practical wisdom to ascertain and understand. Such a conception had already entered into modern thought with the work of writers like Vico and Montesquieu, and formed the basis of an historical treatment of sociology. From these it passed through Condorcet and the St. Simonians to Comte and his disciples. In another incarnation it inspired the Hegelian philosophy of history. Amid great variations, not merely in detail but in the whole handling of the subject, historical sociology leads to certain fairly well marked views on

questions of ethical principle. First of all, it lays down that neither duties nor rights can be studied without a knowledge of social conditions, for without society there is neither duty nor right. But further, social conditions are not the same everywhere or at every time. The relations on which the preacher of absolute right and wrong would rest his moral laws are themselves moving relations. Humanity is a growing organism, and the problem of the thinker is to understand the laws of its growth and adjust the code of conduct which his disciples are to preach to the needs of the present phase. For though there are "laws" of social growth, we are not to suppose that the result is so determined as to be wholly beyond the power of human intelligence to modify. There are "laws" of health, yet there is a use for doctors. It is so far as we understand the laws of social life that we can hope to affect it intelligently, and in point of fact it is of the essence of its growth that humanity becomes conscious of itself; that is to say, more and more aware of the conditions upon which its happiness and progress depend, and so capable of self-direction. In this conception of a self-directing humanity lies the basis of scientific ethics.

As conceived by Comte, it was more than a basis of ethics. Collective humanity, as a being that never dies, but grows, learns and develops throughout the ages, was to be the object of a new religion, a religion dealing with realities and based on science, that should put behind it for ever the dreams of the theologians and the cobwebs of metaphysics. Whatever there was of spiritual good was to be found in the life of humanity, in the relations of human beings to one another, and nowhere else in the world. With regard to the ultimate origin and basis of things, men could imagine what they pleased, but no absolute truth was obtainable. Throughout history schemes of theology had arisen, flourished and decayed. They had come into being to meet some intellectual or moral need of mankind. They had flourished so long as they satisfied that want; they had perished when other wants arose, when deeper questions were asked, when they no longer fitted the more developed character of the race. Their strength lay not in their truth, but always in their practical value. For humanity had worked out empirically, as it were, in a blind, groping, unconscious manner, both the fundamental institutions necessary to its existence, such as marriage, property and government, and also the ethical and religious systems which were suited to each stage of its development. But in all cases there was a large admixture of error, and it was the problem for a scientific religion to maintain the truth, letting the shell of error drop off. The gods, taken at their best, were incarnations of essentially human relations, human feelings, human duties. Could not these human relations, these human duties, be made objects of reverence apart from the shell in which they had hitherto lived, and would they not be purer so conceived? For the very process of incarnation had robbed the spiritual of half its character. By transferring it to a supernatural world, it had given ground for the suggestion that it had no application to this world, and based it on dogmas which proved a treacherous support, instead of allowing it to stand by its own inherent strength. The problem of positive religion was to restore virtue and righteousness, charity and justice, to their true dignity, to recognize in them a positive value as integral elements in the noblest life of humanity, requiring no sanction, theological or metaphysical, to back them up, but relying on their own inherent beauty and strength. But theological religion at its best, as seen in the mediæval Church, had provided a rule for all life. It had presided over every occasion; it had been present at birth, marriage and death, in sickness and in health, in good and evil fortune, encouraging saintship, heroism and devotion, comforting misery and cheering the penitent. In all these directions the conception of humanity was to fulfil the same function; it was the focus and meeting-point of all good and resolute effort; the humblest devotee of science no less than the greatest philosophic intelligence was contributing to its progress. The statesman, the man of affairs, the captain of industry, had their function, did their service in forwarding the progressive organization of life. The poet, the musician, the artist inspired or expressed the onward movement of the human spirit. All past history was lit up by the conception of this great movement to which all previous efforts of humanity pointed. A positive religion would provide for a renovated worship of saints and heroes in the persons of all who had contributed to the march of the human mind. The light thus reflected on the past shone even more brightly upon the present. Every social effort, every endeavour to the furtherance of knowledge, art or industry received a new dignity when considered as contributing, each in its degree, to one great, all-embracing cause. Nor were the minor interests of life swamped by the supreme conception. Religion and humanity preached no vague diffused benevolence which should override the more direct and personal ties that bind us to our family, our neighbour and our country. On the contrary, all these had their place. Each was recognized as intrinsically a worthy object of devotion, only it must be a devotion limited by the broad requirements of the human religion—that is to say, it must be a devotion purged of the elements of collective pride and selfishness. We must love our country, but not so as to wish it to dominate all others. Our chief pride in it must lie in our sense of the service that it renders to humanity, just as the only legitimate pride that we can feel in our own achievements or in the career of those near and dear to us should depend on the extent to which those achievements or that career has been of service to the world at large. Humanity was not to override those fundamental attachments which make up the larger part of practical life for all of us. It was to purify and co-ordinate them, to infuse into them a spirit of wider sympathy, to elevate them by a deeper sense of their meaning and value.

The peculiar form given to humanitarianism by Comte has been criticized from many points of view. Fundamentally it is objected that it propounds to us the worship either of a vague impalpable abstraction, or, if we reduce humanity to concrete terms, of ourselves—weak, imperfect beings as we are. To this, one of Comte's ablest disciples replies that the conception of humanity as the goal and basis of human effort is misunderstood.

> "No one thinks that when he mentions the word England or France or Germany, he is talking of a ghost or a phantom. Nor does he mean a vast collection of so many millions of men in the abstract; so many million ghosts. Man in the abstract is of all abstractions the most unreal. By England we mean the prejudices, customs, traditions, history, peculiar to Englishmen, summed up in the present generation, in the living representatives of the past history. So with Humanity. . . . Is such a religion self-worship? . . . What explains the error is the belief that by Humanity we mean the same thing as the human race. We mean something widely different. Of each man's life, one part has been personal, the other social: one part consists in actions for the common good, the other part in actions of pure self-indulgence, and even of active hostility to the common welfare. Such actions retard the progress of Humanity, though they cannot arrest it: they disappear, perish, and are finally forgotten. There are lives wholly made up of actions such as these. They form no part of Humanity. Humanity consists only of such lives, and only of those parts of each man's life, which are impersonal, which are social, which have converged to the common good." [1]

---

[1] J. H. Bridges, *Essays and Addresses*, pp. 86–88.

It would seem from this that the conception of Humanity is not so much what logicians call a collective concept including all men and women. It is rather that of a Spirit pervading human beings and their life; not, indeed, a Being outside and over above men and women, but a Being that is the best of them—the good that is in each working together—the spiritual whole so constituted.[1]

When stated in these terms the conception of Humanity comes into close relation with a conception towards which the metaphysical method which Comte rejected had made independent advances. The Hegelian philosophy, for example, conceived history as a process wherein the Spirit, continually seeking realization, arrives finally at self-consciousness. Allowing for difference of terminology and for the more essential point of divergence that Positivism is a theory of practice, Hegelianism a theory of the ultimate nature of reality, this is, after all, something very close to the idea of humanity as a name for all that makes for good in men winning through the long struggles of historical development to consciousness of itself, and the deliberate guidance of its own life. In either case it is at bottom the idea of the development of the divine in man that is used as a solution of ethical and religious problems. From such opposite poles do we approach an idea which would seem to be at the heart of modern thought. The God of Monotheism, as the ideally perfect Being, became, as we saw, separated from the world as its Creator and Ruler. From this separation arose ethical problems which might be concealed under a mass of optimistic verbiage, but were incapable of any genuine solution on the basis of an unconditional creation of things by a Being who is perfect in himself. We have seen the partial recognition of this *impasse*, pointing religious thinkers through the theory of Free Will to an educative conception of the dealings of God with man. Idealism, carrying this further, has sought to overcome the cleavage involved in Monotheism, to bring back the divine Creator into the undivine created world. It has thus been led by a very roundabout road to a transfigured version of that indwelling Spirit with which religion starts, a Spirit which dwells in things instead of controlling them from without. When the attributes of this Spirit are frankly criticized they are found to imply that it is not the whole of nature, but is conditioned by nature even while shaping it, and strives with things, though they are its own flesh; and only through the evolutionary process which science, as well as philosophy, recognizes, presses on to that final and complete domination of the conditions of existence which the earlier theory attributed to it at its point of departure as the starting point and origin of Creation.

---

[1] If it be said that such a unity of individual distinct minds can only have a mystical meaning, it may be replied that it is precisely the kind of unity towards which the passage quoted above from Dr. Bridges points. If, further, it is alleged that only the individual minds are real and that a totality constituted by them is not a real being, the reply is that this is a form of the nominalist fallacy. The totality is not another individual similar to those which compose it, but is none the less the real being which together they make up. All the vital processes of the human body proceed in separate cells. The body itself is not another cell, but neither is it a mystic creation. It is the totality of the cells, and its life the totality of the cellular processes. So in all probability conscious life depends, not on a process in any one cell of the brain, but in multitudinous processes carried on simultaneously in cells that lie far apart in the cerebral mass. Yet consciousness is one. So the Mind of Humanity is the unity in process of formation of multitudinous minds of men. To call it "mind" may be metaphorical and inadequate. But to call it a real agency is, I think, literal prose.

The conception of Development has been applied and extended by physical science. Biology has carried it far beyond the limits of human history and applied it to all forms of life. Contemporary physics and chemistry are using it to explain the constitution of inanimate matter. However little thinkers may agree about its philosophic interpretation, the idea of Development is the central conception of modern thought, and the idea of Humanity in development holds that place in modern ethics.[1]

If we consider carefully the differences of interpretation which distinguish different schools of thought, we shall find that they turn largely on the value of this conception—or, indeed, of any conception derived from human experience as an expression of the ultimate nature of reality. The self-conscious Spirit of Hegel, and the self-directing Humanity of Comte, for example, differ primarily on this point. The Hegelian would hold that Absolute Self-Consciousness can be proved by a metaphysical demonstration to express the true character of the Absolute. Those who at all lean to Positivism would deny that such reality is in any way knowable, and would claim for their principle merely that it formulated the results of experience and would prove a trustworthy guide of life. But the doctrine that the ultimate nature of reality is unknowable is itself a metaphysical proposition which is open to question. It is equally possible to hold that all knowledge is, so far as it goes, knowledge of reality. On this view reality shows its character in experience, though in our limited experience it shows it only in part. If, then, the whole course of history, or say, rather, of physical, biological, and social evolution, is to be summed up in this—that it is a process wherein mind grows from the humblest of beginnings to an adult vigour, in which it can—as in the creed of humanity it does—conceive the idea of directing its own course, mastering the conditions external and internal of its exercise, if this is a true account of evolution—and it is the account to which positive science points—then we cannot say that this is a mean and unimportant feature of reality that is disclosed to us. We can hardly suppose such a process accidental or quite peculiar to the conditions of this earth. At any rate, as far as the widest synthesis of our experience goes, it shows us Reality neither as a providentially ruled order nor as a process of fortuitous combinations and dissolutions, but as the movement towards self-realization of a mind appearing under rigidly limited conditions of physical organization in countless organisms, and arriving for the first time at a partial unity in the consciousness of a common humanity with a common aim.

---

[1] It is one of the ironies incidental to the development of thought that the biological theory of evolution, which was precisely the contribution required from Physical Science to round off and amplify the humanitarian conception of progress, should, for half a century, have been the most potent intellectual weapon against humanitarianism. This unfortunate result appears attributable to a confusion between different planes of thought. When evolutionists set themselves in earnest to find a meaning for such terms as "higher and lower," "fit and unfit," which come so readily to the lips, they cannot well avoid the appeal to a rational standard of ethics. With the introduction of such a standard there arises the possibility of distinguishing the processes which make for the evolution of a higher type from those which tend only to differentiation. The upward process, the "orthogenic line," as it has elsewhere been called, being thus distinguished, it became possible to define its tendency as that which makes for the advance of mind towards self-mastery. But this is again the self-conscious Spirit of Hegel, the self-directing Humanity of Comte.

It is very noteworthy that Mr. Kidd, starting from the biological point of view, has in his later work (*Principles of Western Civilization*) laid great stress on self-conscious development as the turning point in Evolution.

8. To enter more fully into the questions of historical fact and philosophic interpretation raised by the humanitarian theory would be beyond our present scope. But on the ethical question which it suggests a word should be said. To begin with, we may remark that as a standard of action the conception of human development requires some further definition. A Utilitarian in particular might ask whether it is any and every sort of development that we seek, or only such development as leads to happiness. If the former, he will contend that our standard is bad; if the latter, he will maintain that we are, after all, Utilitarians, taking pleasure as an ultimate end, though we may call a scientific view of the collective life of Humanity our means to that end. By introducing the idea of historical growth we have

not, after all, evaded the philosophic problem. How moral ideas have arisen and grown is one question, how and by what principle we, as conscious and reflective beings, ought to shape them, is another. We must therefore revert to the question raised by the Utilitarians, and ask how the standard they propose looks in the light of the further developments of thought which have been traced.

The Utilitarian theory, we saw, rested principally on an analysis of Desire. Now in the controversies to which this analysis has given rise, two opposite fallacies have been revealed. On the one hand, pleasure has been taken as the direct and universal end of action. On the other, those who have refused to identify pleasure and the good, have denied all relation between them, or have reduced pleasure to the position of a result supervening on the attainment of desire. Now, inasmuch as pleasure is distinct from happiness, this latter position has a justification of its own, but this has hardly been the point of the controversy.[1] When we have distinguished Will and Happiness as having to do with the permanent elements of well-being from desire and pleasure as concerned with the temporary, the same question arises in a new form. Is personal Happiness the direct object of Will, or do we choose a certain mode of life from merits of its own, and merely find happiness in the fact that we are able to realize the result of efforts?

---

[1] To resolve happiness into pleasure was the initial mistake of the Utilitarians. In part it proceeded from the influence of the Humian metaphysics, which denied permanent "substantiality" to the ego and resolved it into a series of states. Such an ego could only have a series of feelings, and to such temporary feelings the name of pleasure and pain are appropriate. But at bottom, I think, it proceeded from a laudable desire to define a man's happiness as something strictly pertaining to his own conscious existence. Without such a strict definition the fundamental question of modern ethics is not fairly faced. For the man who sacrifices happiness to duty admittedly "does well," and from this it is easy to proceed to the proposition that "it is well with him," and that he is accordingly a "happy" man. In that way of putting the argument (which has nothing to do with the empirical fact that by abandoning apparent happiness a man may obtain real inward peace, which is conscious happiness in another form) the old ambiguity between happiness as something felt and happiness as the possession of admirable qualities is revived, and the question whether the one should be given up for the other is blurred. The Utilitarians deserve more credit than they have received for forcing a clear statement of the question by resolutely defining happiness in terms of feeling. On the other hand, if the self is more than a series of fleeting states, happiness is more than a succession of pleasurable feelings. If the self is the permanent constitution or psychical fabric which is the subject of experience, happiness is the relatively stable condition of the structure—the quality which tinges ordinary life and lends it a roseate hue, which makes pleasure joy and pain bearable. I say relatively stable, because though in a measure dependent on our own personality—so that some have a happy, others an unhappy temperament—it is capable of being temporarily or even permanently destroyed by the really great events of life—some one's death, or the ruin of a cherished hope. It is *οἰκεῖόν τι* in that it belongs to our personality, and *δυσαφαιρετόν* in that no light thing robs us of it. But under the misfortunes of a Priam the most that can be said is "*διαλάμπει τὸ καλόν*."

There is a third alternative which seems to accord best with the analysis of effort and to be supported by comparative psychology. In speaking of pleasure we are apt to forget in English the Greek distinction between *τὸ ἡδύ* and *ἡ ἡδονή*, the pleasant object or action, and the pleasure which we feel in relation to the object or in performing the action. The normally constituted animal on the whole desires things that are pleasant. Were it otherwise, pleasure and pain would have no function. For they come into existence by serving the function of regulating impulse, encouraging one impulse, and modifying or inhibiting another. The impulse to eat nasty food is checked by its nastiness, the preference for pleasant food is encouraged by its pleasantness. Indeed, in the life of the lower animals all that we know by direct observation is the encouragement and the inhibition, and the permanent effects thereof. The pleasure and the pain we impute to the animal on the analogy of our own consciousness. The value of this machinery for the regulation of impulse is that it enables the hereditary structure to become more elastic. The animal which can learn by pleasure and pain may have impulses which would lead to its destruction if not checked by the painful results, but for this very reason it is not compelled to come into being with all its modes of behaviour preordained, but may safely possess a richer inheritance, enabling it to deal with wider variations of circumstances. The implication here is that the pleasurable on the whole coincides with the life-giving, and the unpleasant with the harmful.

Impulse, then, is on the whole regulated by pleasure, and pleasure is on the whole subservient to the needs of life. But (1) impulse is the primary fact. It is not based on pleasure but confirmed or modified by it, and the same thing is true of Desire, which is impulse shaped and directed by the idea of its object. The desired object is attractive, and the attraction is not essentially a faint anticipatory realization of the pleasure to be derived from it, but a feeling-tone attaching to the idea itself and giving it driving-force. (2) The adaptation of desire to pleasure, and of pleasure to life-giving or, as we may call them, developmental ends, is never perfect. Human, and even animal, nature is many sided, and a function which on the whole tends to preserve the stock may have many harmful developments which natural selection fails to lop off. Thus the pleasure of eating and drinking, which on the whole is necessary, may stimulate over-eating and over-drinking, which are *pro tanto* harmful. Further, different impulses and different pleasures may conflict with one another, and those which are on the whole most necessary to the life of the species may be thwarted by others felt with greater immediate intensity.

While Desires are many, various, and passing, they belong to a self which is single and permanent and which may act as a unity for ends which appeal to it as such. This action, which we call that of Will, implies a certain inter-relation of the various impulsive and emotional tendencies, which are naturally fostered and strengthened so far as they fall in with the ends which the Will adopts, pressed and re-moulded to adapt them to the course of life which it prescribes, or it may be altogether resisted and, if possible, suppressed. In so far as the ends adopted respond to the main impulses of the individual, giving scope, for example, to his emotional needs or intellectual power, it satisfies, and provides the substance of Happiness, while internal conflict and still more the anarchy resulting from the loss of any unifying object are felt as unhappiness and misery. But here again the object is not chosen as a means to happiness, but valued as an end, and the same quality that makes it valued makes of the experiences active and passive which it yields, a life in living which we feel happy. Happiness and Will are thus in a relation analogous to that of Pleasure and Desire. Happiness in the experience of the life chosen confirms and strengthens the line of choice. Misery, discord, and the sense of unfulfilment inhibit action, and tend, if all too slowly, to re-shape the course.[1]

What can be said in general terms of the objects which the will adopts? First, the conditions of evolution determining the genesis alike of Desire and Pleasure, and Will and Happiness, secure a rough and broad correlation of these driving and guiding forces of action with the vital needs of the race. This is

---

[1] The question of the relation between pleasure and desire, will and happiness, may be put in a simpler form by asking, *e. g.* whether the value of a given object consists in the pleasure derivable from it, so that if we imagine the pleasure removed the value would disappear also. If the answer is affirmative, the conclusion may be drawn that the thing itself is indifferent—merely a means to pleasure. If negative, that the pleasure is, as it were, adventitious and irrelevant. The true answer rather is that the pleasure we take in a thing is merely another expression for the value we attach to it. But the value is attached to the thing. Or if we prefer the phrase, the pleasure is in the thing, related to the thing, not a subsequent effect which the thing happens to produce and which might as well be produced by anything else.

true of the springs of action from hunger to romantic love and from fear to a patriotic devotion. Thus in the raw material of instinct as rough-hewn by heredity there is a potentiality of harmony between impulse-feeling and the permanent requirements of life, but there is also manifold opportunity for conflict and loss. Not only may one impulse clash with others, but the effort after self-control may take the form of stamping out capacities and so impoverishing life. Similarly in the relations of individuals and groups. The anarchic self-interest of each segment centred on that which makes for the preservation and expansion of its own stock is matched by the narrowing tendencies of repressive despotism. Between these poles rational ethics seeks the line of harmony. Instead of achieving unity by the repression of any given capacity, it seeks, if possible, to take it up, transmute it, and find for it a direction in which it may work with the rest, and in so doing it makes for a life which is fuller and more harmonious. Now if life is good—if, that is to say, it is the maintenance of the needs of the individual and the race which forms the groundwork of our aims and our emotional interests—then a fuller, wider, richer life is better, and the fullest, widest, richest life the best. But from the rational point of view, which contemplates the life of the race as a whole, any enrichment of life in one direction which is necessarily balanced by loss in another direction cannot on the whole be good. The race as a whole, life as a whole is its concern, and the fuller life which it seeks must therefore in its many-sided activities be in harmony with itself. The aim of rational ethics, then, is the harmonious development of the racial life, and this, stated in terms of feeling, is the same thing as general happiness, happiness being the sense of a full and harmonious life.

This analysis of Desire and Will, Pleasure and Happiness has thus led us by another road to that conception of a synthesis or harmony of Action which we said above to be the postulate of a rational theory of moral obligation. As the supreme object of endeavour this furtherance of the collective life of humanity becomes the standard by which moral rules and social institutions are to be judged. This object includes all the partial aims of man, all his loves, joys, hopes, ambitions, tastes, his love of family and fatherland—all, so far as they do not antagonize one another but co-operate. Thus it rests on elements of feeling implicit from the first in the moral consciousness, but its full apprehension as that which gives meaning to all earlier development postulates in the collective mind a self-knowledge and self-guidance parallel to the self-consciousness of the individual.

Moral progress is the gradual conversion of the mind whereby this meaning becomes explicit, whereby its own unity becomes apparent to it, and the potentialities of its life and growth as a unity are grasped as the supreme object of endeavour, and the principle governing the rules of right and wrong.

In essentials this principle is the distinctive achievement of the modern mind. It is true that in the central conception of harmony modern ethics is a return to the Greeks. But it returns charged with all the protest against human limitation, all the romance, the chivalry, the sense of infinitude which are incarnate in mediæval and modern feeling. Now harmony implies order, measure and system. Divergent elements can be brought into a unity and made to co-operate only when each is fined and polished to fit in with its neighbour. Hence symmetry, balance, and in a sense limitation are the features which always impress us in the Greek ideal. It is, indeed, easy to over-emphasize a contrast which strikes every one on the surface. Plato, after all, is the first great Romanticist with his insistence on Eros as the driving force even in the world of pure thought, with his Philosopher King who, holding fast to real Beauty and real Justice, moves in an Elysian region far above the turmoil of that poor mankind for whose sake he will yet descend as a ruler and guardian into their cave, with his just man sustained by that which makes him indifferent to the opinion of gods and men, who will meet an unjust death rather than break the laws which human government is mishandling to his hurt. Aristotle enshrines the same spirit in four words which thrill through his matter-of-fact acknowledgment of human weakness when he bids the thinker as far as may be "put off his mortality." The Stoic brings the wise man in direct relation to the supreme reason that controls all things, and sets the free life of the soul above the limits of all physical and social conditions. None the less, the ideal to which all alike aspire is that most clearly expressed by Aristotle as the perfection of a type which is in essence eternal and immutable in a universe whose process consists in the realization of a system of such typical forms, and the notion of type, even the notion of perfection involves that of something measurable, defined, and in the last resort limited and statuesque. When we turn to mediæval life, whether to its poetry or its action, to its religion or its chivalry, to its cloistered chastity or its romantic love, whether to the dim vaults of its cathedrals or to the grotesques of their gargoyles or misereres, we are conscious of a wider and more untamable force, a breath from the Teutonic forest urging on to the unattainable and finding no joy in that which it can actually reach. We feel it the more keenly because it is confronted with a theory of subordination, an admission of human impotence and nothingness, an exaltation of divine majesty, and a negation of earthly life crushing with vast superincumbent weight the forces of thought and imagination that have reared it. Every impulse of man is raised to its highest power and is in its turn supreme. The love of God is spoken of in terms of romantic passion and the love of woman in terms of the worship of God. The least thought of the flesh is deadly and the knight is stirred to golden deeds of selfless chivalry by the glance of a woman's eyes. The martyr bears utter ignominy without raising a hand in self-defence, and personal honour compels a man to wipe out the least fleck upon it in the blood of the assailant. Charity has nothing to do with that liberality which is the mean in the expenditure of money. It is to divide the last coat with the beggar and go forth in rags into the world. The sainted king must kiss the leper and wash the beggar's feet, yet the powers that be are ordained of God, and their magnificence and state are proper adornments of the heads of that hierarchical order which is of divine institution. The pope is slave of the slaves of God, but yet is the summit of the earthly order, with power to bind and loose here and hereafter. At every point we are taken beyond what is actually or even possibly human. The requirement that man sets upon himself is infinite—not the harmony of measured parts each rounded to perfection in itself, and as such filling its due place in order with the rest, but the measureless which this life cannot attain and which experience can only symbolize. But by the most tragic contradiction of all, the theory of the infinite, the system of salvation, is the one thing that is worked out to compact and finite form, and in the end to dull and deadly prose. The mediæval scheme of divine government, with its frigid distinctions, its cold hierarchies of conceptions, its dismembering of truth, applies the Aristotelian logic to the establishment of an order more statical than that of its progenitor, and mechanical in its interpretation of nature and spirit where Aristotle had ever sought for an organic view. The implicit infinitude of the mediæval mind broke upon the strong finitude of its theory.[1] Modern thought, breaking away by successive wrenches from mediæval discipline and urgent to found a theory of life which it can justify in reason, is still confronted by a very similar dilemma. The rational appeal is to the nature and experience of man, the rational impulse is to introduce harmony into effort and life, but in human nature itself lies the effort to transcend it, in human experience the questions that point beyond it, in the ethical impulse that makes for harmony qualities that brook no limitation and break up any established finite order. Hence, though social order is wider and in outer relations generally more tranquil, there is a deeper and more perpetual unrest and a swift, unceasing swing of thought. But though there is paradox here and a problem, there is no insuperable contradiction. Such order, intellectual or practical, as imperfect man can establish is never complete and all-embracing, but limited and provisional. It has to expand, and the rebellious elements are the ferment that maintain life and make for growth. But that element which is the spring of progress has a value which in the coolest rational assessment must stand high, and all the higher, in accordance with the strictest scientific calculus of demand and supply, for its rarity. It is true that devotion to an impossible cause may waste much energy and break the life of the individual. But the spirit which sustains such devotion is the most vital thing in the world, and it is better that it should live and act unwisely than perish from not acting at all. The deeper issues are apt to be stirred only at certain points of concentrated interest, and at first blush there always seems something irrational in preferring a single object to the whole order of normal life. But in reality, if we could start from one of these points of decision and deploy all the line of consequences upon the plane of ordinary experience, it would be found to cover ground enough in mere magnitude to justify the value which we place upon the issue. The theoretical problem of ethics is to effect this measure, and thus find place in a rational system for that which on an over-simplified view figures as irrational. Its practical problem is to find the real direction of these impulses and so convert them from wasting torrents to irrigating streams in human life. To do this is to make them aware of their origin in human needs and their function in human emancipation. In this the modern spirit has so far succeeded as to transfer the devotion of the martyr and the fire of the prophet to causes more real and free from selfish alloy than that of personal salvation. It has spent them in no niggardly measure on the liberation of a nation, a class, or a sex, on the emancipation of the slave and the industrial toiler, on the healing of the sick, on the advancement of knowledge, the exploration of the earth, the conquest of material power. From the French movement of the mid-eighteenth century onwards it has thus in a manner united the enthusiasm of the Orient, the fighting spirit of the Crusader and the social rationalism of the Greek. For it has emphasized the claims of the individual, his rights, his conscience no less than his duties, and has often set the established order at naught if it has seemed to violate what is sacred to personality. Liberty and social service are the poles on which it turns, and to find the true meaning of the one and the end and method of the other is the task of social theory. The ethics that is to do justice to this liberating and yet constructive movement must aim not at a complete and static harmony but at one that moves and adapts itself to growth. Its model is not the completed circle, but rather the cycle of the foliage ending in the point which enfolds the leaf-buds of next spring.

---

[1] Cf. on the whole of the above, Taylor, *The Mediæval Mind*, esp. Book II. chap. xiv.; Book III. chaps. xv., xvii., xxiii.; Book VII. chap. xliv.

These changes affect the idea of harmony in what we may call its form. The whole sum of intervening experience since the days of the classical philosophers has also deepened and enlarged its content. To formulate the character of changes so complex in any summary terms may well seem a hopeless task. At most we may hope to seize certain pivotal points on which development turns. The earlier Greek ethics of the fifth and fourth centuries achieved a reasoned ideal of personal character and social order in harmonious interaction. But its personal ideal was on the whole aristocratic and its social ideal statical and restricted by the limitations of the city state. The later moralists and, in particular, the Stoics, applying the law of nature as a living principle of criticism, expanded the conception of human brotherhood, made the individual—noble or base born, Greek or barbarian, bond or free—the master of his fate, and set forth the simpler elements of a world polity. But in the Stoic period free social organization is already giving way to centralized military empire, a constructive social scheme is ceasing to be possible, and the individual is, on the whole, left to grapple with his social surroundings as best he may. Still, the Stoic universalism prepared the way for the doctrine of salvation, which we may take as the pivot of the Christian ethics. Now, salvation is not merely open to all men who accept Christ. It is equally the duty of all Christians to secure the salvation of their brothers and sisters. Universalism thus acquires a new meaning. It is not merely that all have a certain minimum of rights, but that all owe to all a duty which touches the essentials of being. The missionary spirit, the work of practical redemption, takes a place which only a religion could give it. It is the duty of each man not only to save himself, but his brother. In another way the universalist principle is richer in content, for the Christian salvation is not confined to the strong and wise, but is within the reach of babes and sucklings, and the humblest soul has a value which is in a sense infinite, seeing that no gain elsewhere can replace its loss. There is here at bottom the most thoroughgoing doctrine of equality and the most comprehensive hope for all men ever preached, and this core of ethical religion remains, however woefully overlaid with the husks of sectarian narrowness and doctrinal strife. Yet, the doctrine of brotherhood and the missionary spirit notwithstanding, the Christian ethics remained at its centre individualist and supernaturalist. It is the individual soul that is to be saved, and its salvation is a preparation for another world. The distinctive note of modern ethics is the return to the social and the positive point of view. The salvation of every man and woman is still one pole of ethics, but it is one pole only. Salvation is to be within this life and for this life. It stands not only in the possession of the soul in complete self-mastery, but in an organic relation to a wider life —in its simplest form a personal relation to other individuals, in its wider and more complex forms an impersonal relation to the life of the community and the race. But salvation so conceived cannot be compassed by the individual alone or by missionary effort to the individual as an individual. There must equally be a social salvation. Society has a soul to be saved, and its salvation is in the justice, humanity and freedom realized in its inward and outward relations. Only under such institutions and in response to such governing principles can the individual find his right niche and do the work which is to make the best of himself and the best service to his kind. The Greek harmony returns, but charged with deeper and richer content. It is not merely the harmony between the self-development of a wise and strong man and the requirements of a civic order which he, as one of the ruling class, helps to maintain. It is the wider and more difficult harmony between the claims of human nature in its infinite variety, in all its ascending and descending range of power and scope, to find expression and live its life, and a claim of the collective effort, itself hardly less variable and self-conflicting, towards the realization of great ends common to the race. The actual social order, including in that term the system of ethical and religious ideas along with the body of institutions, is of the nature of an experiment in the organization of life. Its value is relative on the one hand to the requirements of every individual soul within its sway, on the other to the life of mankind as a whole. To bring these two poles into relation is the problem of modern ethics. Thus, where the Greek sought a harmony between the self-development of the individual and the stability of the social order, the modern seeks a social order which shall reconcile the ultimate claims of every individual upon society with the claims of collective human progress upon each constituent social unit. Ancient ethics worked up to the doctrine of universal salvation with the warmth of brotherhood and, further, of missionary zeal which this implies. Modern ethics has restored to this doctrine the social and positive content which it lost; and thus effects a synthesis of the Greek and the Christian teaching of social statesmanship and apostolic ardour.

Finally, the positive conception of ethics in relation to the modern idea of development carries with it a penetrating change in the ethical point of view. Common sense evolves for itself a certain practical standard with which the thinker starts. That standard is at first his own, and to get from it to a reasoned system he has to view his own mental make-up from outside, to regard it as something due to determinate conditions, to find out what these conditions are, and to distinguish what is permanent and necessary in their operation from that which is transitory or accidental. This is the relative standpoint, which is characteristic of modern thought and is essential to the full appreciation of development.

Ancient thought, it is true, recognized a conventional element in established custom, and contrasted it with the natural, which is the same everywhere. But, to the modern, nature is itself a process and human nature a composite product—the very structure of our moral consciousness depending on anterior conditions. Now, if we are to attain an objective—that is, a rational—standard, we must lay bare these conditions. We must resolve the structural concepts which at first we take for granted—concepts such as self and others, good and bad, right and duty, with the experiences out of which and the thought processes by which they are built up. Starting from these elements we can thus recognize in the ethical code of mankind from the most primitive onwards, beginnings of a synthesis, incomplete and inconsistent, no doubt, yet, such as they are, the indispensable basis of social life. Through many failures and relapses, these beginnings are, on thiswhole, enlarged in response to the needs of a wider social life. The movement is referable, both in its origin and its advance, to those elements of thought and feeling which we have here gathered together under the name of practical rationality. Such rationality, co-operating in countless individuals through the generations, is a real bond of unity in mankind, and it is this unifying principle that has been called Humanity. Now, in the culmination of ancient ethics man was to serve humanity as a community within the kosmos, but we might say rather that humanity is that—call it spiritual principle, organic unity or by whatever inadequate name we may—which works towards the realization of a kosmos that is as yet a very distant ideal, and not only are duties owed to it, but its needs prescribe what our duties are. Hence, though our argument has gone to show that our ethics are founded on deep-lying instincts, and though the humanitarian idea is held to be only the explicit recognition of a principle that was all along implied in the conscious moral judgments of mankind, yet the effect of this principle, once recognized, is a Copernican change of attitude. Hitherto human conduct has been conceived as bound by law—first by divine law, then by natural law. But if the humanitarian principle is correct, man is not made for the law, but the law for humanity. Instead of supernatural religion being the basis of ethics, ethics becomes the test to which such religion must submit. The relative value of the creeds is measured by their ethical efficacy, and the ethical consciousness is seen to be the only firm point of departure for any attempt at a spiritual interpretation of nature. As with religions, so with social institutions. Property, contract, marriage, the position of women, class distinctions, political obligations, the right of warfare and of conquest—all these in olden days were founded on custom and supported by divine authority. Whoso would seek the good of society must work within the limits thus rigidly laid down by the moral or the religious tradition. When revolts against these limitations occurred, they took the form of appeals to expediency, or perhaps of a sweeping denial of moral obligation, or, again, of the assertion of some counter principle of no greater claims than that which was called in question. In a rationalistic system of morals the whole point of view is changed. These institutions have grown up in rough accordance with the circumstances of social life, but they have no value or validity except in so far as they subserve human needs. On the other hand, they are not to be set aside on particular occasions when they happen to be inconvenient, as the doctrine of expediency suggests, not only because in the long run nothing is so inexpedient as the practice of unsettling society, but also because the rights and duties recognized by the ordinary consciousness when viewed genetically are seen to have arisen in response to social needs, and to contain elements, however roughly put, of ethical truth. They are like the empirical generalizations of common sense which contain truth, though not accurately true as they stand, and historically speaking they are seen to develop, to expand, define themselves, deepen and purify their meaning as ethical thought has developed. Thus they lie ready to hand as a basis for a scientific sociology. Sociology, therefore, is not compelled to start from an empty slate and consider what in each case would promote the greatest happiness of the greatest number. It has rather to take the institutions it finds, and aim at a scientific determination of the function which they fill in the life of humanity.[1] Take the case of private property, for example. Here is an institution which from one point of view may be regarded as the only method of securing to the workman the fruits of his toil. Under suitable conditions it may in reality have that effect. Under other conditions it may as easily become the means of excluding the great mass of the people from the means of earning an independent livelihood. When the right of property is made absolute, whether as right natural or right divine, there is no ethical means of discriminating between the two cases. All the wealth of the country might fall into a single hand, as in Mr. Wells's romance, yet if it were in the bond, society could do nothing but submit. Rights pushed to this point are answered by rebellion, and are therefore justly stigmatized by Bentham as anarchical fallacies. They provoke the doctrine of pure expediency, which denies that there is any right but the welfare of society, and forgets that it is essential to the welfare of society that the obligations and expectations of its members should be defined and secured. The rationalist criticism of property would have to meet all these points. It would have to discuss the functions which the institution of property performs, and so define it as to secure that it should perform those functions and obstruct no other useful organ of the social structure. It could not be satisfied with upsetting generally recognized rights wherever they happen to be inconvenient, nor with the permanent maintenance of rights which can be shown to entail a balance of evil consequences. It would have to take the institution of property and examine it in all its developments and ramifications, to consider inheritance and bequest, the nature of exchange and the resulting distribution of wealth under the conditions of modern industry, the effects of monopoly and the growth of values arising from the increase of population, the morality of acquiring wealth from occupations injurious to the people at large—these and countless other details have to come up for judgment in a scientific reconstruction of the nature and measure of the rights of property which a rational scheme of ethics would recognize as suitable to be maintained in the permanent interests of society.

---

[1] The great historical example of this method is, of course, the work of Bentham. For an estimate of the reforms achieved under his influence, see Dicey, *Law and Opinion in England*, pp. 183–209. Professor Dicey, in whom after many years Bentham at length finds a fair judge, does not ignore the limitations of the Utilitarian basis. These, in fact, were such as to render sure going possible only so far as the means to the general happiness were matter of obvious common sense. For the more complex problems—economical, social, religious, political—of the modern world a scientific sociology is needed, and the need is even more urgent than in Bentham's time.

9. Such a reconstruction is not the work of a day—and in social development, be it remembered, a hundred years are but as yesterday. If we would know the fruits which ethical rationalism has borne we must seek them, not in the work of any one school which has apprehended the principle in all its fulness—for no such finality is as yet, if it is ever, possible—but scattered in the work of different and often opposing schools, in which the principle has been apprehended partially or under different aspects. Indeed, the influence of the humanitarian spirit in the modern world has been far wider than that of all the schools which could be called distinctively humanitarian.[1] For where there are few who will agree that human ethics form the root from which all true knowledge of religion springs, there are many who will admit that the relation between religion and ethics has been in a manner reversed in the modern world, so that whereas ethics was formerly based on religion, religion is now deemed to have its firmest root in ethics. Many, again, who would doubt or reject the conclusions reached above as to the ultimate basis of obligation, would yet admit that humanitarian ethics, whether acting directly or through a revivified religious consciousness, has had a large share in the distinctive changes that have made the modern state and the civilization of the modern world. In this broader sense humanitarianism has, in fact, touched every department of practical morals—class and racial divisions, the position of women, the law of marriage, the criminal law, the

---

[1] Still more obviously is it wider than any school or schools of Philosophy. The distinctive ideas of the modern mind have expressed themselves in a thousand ways, in lyric poetry and in music, in fiction and the drama, as well as in avowed political and sociological or religious discussion. In particular, the contrast between the realities of human nature and the conventional assumption of traditional ethics has been handled with more boldness and far more wealth of detail by the novelist and the dramatist than by the professed philosopher. If in the text I have confined myself to philosophy, it is because here the movement of thought receives, not indeed its fullest expression, but its most exact analysis, and is therefore presented in the form most easily comparable with the thought of earlier stages.

law of war, the rights and duties of states, the claims of nationality, the right of property, the law of contract, the rights of association and of citizenship, the equality of religions. We find the humanitarian spirit in that re-casting of values which makes the infliction of misery on mankind a sin not to be erased by any access of national glory. We find it in the heightened sympathies which begin to make cruelty a crime, and in the calmer insight into human nature which banishes the use of cruelty in the repression of crime. We find it in the heightened belief in the power of reason which suggests that in the end rational suasion and just treatment are better methods of leading men to see what is good for them than the shorter and sharper expedients of the drill sergeant, that freedom to advocate error is the best social safeguard for truth, and to rule by the consent of the governed the surest road to social stability. Humanitarianism, indeed, has justified the Christian ethics on its positive side. As against those who maintained that the Sermon on the Mount had only an ideal meaning applicable to a better world, it has vindicated the practical application of the Beatitudes to this world of ours. It has shown that when we look at matters from the point of view of common humanity it is true that there is none so lowly but he must be considered equally with the noblest, that the spirit of mild equity is better even in the interests of order than that of harshness, that it is a hard fact that hatred does not cease by hatred but by love, that the fundamental remedy for evil and for error is not physical force but spiritual regeneration. In a similar spirit it has been able to show that in industry it is not the hard master but the liberal employer who practises the best economy, that from the mere point of view of the output free labour is better than slavery, and highly organized labour than that of the sweater's den; that in politics self-government is a better preservative of union than a centralized despotism, and that order is best maintained when those who have to obey share in the framing of the rules. In a word, it has not only reconstructed ethics, but it has shown that the ethical is valid—that it works as a force to be reckoned with in human affairs. But with no less emphasis ethical rationalism has insisted on that active development of human qualities which supernatural religions have too often ignored. It has justified individuals, classes, creeds, nationalities, that have stood resolutely by their rights and fought for their liberties. It has fostered the newer education of the faculties and ridiculed the sentimentalism which regarded all independent initiative in one half of the race as a kind of indecency. In short, it has conceived the permanent elevation of both sexes and all classes to a life in which they could enjoy that free and full cultivation of their powers, which the best of the older civilizations only imagined to be possible for a narrow class.

Of the future of rationalism it is not our business to speak. We are not concerned with prophecy, but with the analysis of past and present tendencies. But one common misconception has, I hope, been avoided in the account here given. There is a tendency to think of any "rational" system as claiming a certain finality, as forming as it were a closed circle from which the world of imagination is quite shut out. Nothing could be further from the true spirit of reason, which insists as a first principle on the relativity of all human conceptions, on the narrowness of the area reclaimed by knowledge as compared with the ocean of reality, and on the unlimited power of human capacity to expand and explore. Nothing is more certain, if the rationalist doctrine is true, than that doctrine itself will grow, and, as growth implies, will change. But, precisely because such changes are to be expected, any attempt to define their outcome must be valueless. The rational ideal must be an ideal of growth that can accept change, and as it were assimilate it. We may hold the expansion of human faculty, the perfecting of social unity, the ascendency of mind over the conditions of nature and its own existence, for formulas which in different words express imperfectly, but in the best way at present attainable, the supreme end in which all human interests are summed up. But whither this expansion, this growing sovereignty will lead us, is a question to which we can return no certain answer. We stand on the edge of illimitable, unexplored regions, into which our vision penetrates but a little way. But at least we can dismiss as foolish the fear that science will exhaust the interest of reality, or peace destroy the excitement of life, or the reign of reason cramp imagination. The conquests of mind have a very different effect. The more territory that it brings under its sway, the vaster the unconquered world looms beyond.

NOTE.—This chapter has been revised at a time when the humanitarian ethics is under eclipse, and in re-publishing it the writer is aware that he lays himself open to a criticism and a question. The criticism would be that he has given no space to the rival which for the time being has gained the upper hand, the principle of forcible self-assertion in its various forms. The types of thought which radiate from this conception as a centre certainly deserve close analysis, but this analysis would belong rather to a work on ethical theory and its applications than to one concerned with the main outlines of ethical development. A doctrine which the writer regards not as ethical but as anti-ethical could only come within his scope if he were to follow out every branch and side-track of misdirected thinking, which is foreign to his purpose. But at this point the question may be raised whether the doctrine of super-morality—the indifference of the strong man or of the strong government to the claims of personality or the rights of other people—does not really express the main tendency of the modern mind. Humanitarianism, it may be held, was a temporary product of the eighteenth and nineteenth centuries. The movement which set in with full vigour after 1870 is conceived by the humanitarian as a reaction, but has the twentieth century and the future with it. To that we may reply that it may have the future with it—that no one can foretell—but it will not be a future of civilization. It may be that the humanitarian spirit is not yet strong and coherent enough to establish itself, that its partial and qualified successes represent a culminating point in civilization, and that the world will have to undergo another period of re-barbarization before it pulls itself together for a more enduring effort. But prediction in sociology is a fond thing vainly invented. We set out at the beginning to analyze and compare stages of ethical development, and of these the highest and most distinctive of the modern mind, whatever its influence or its future fate may be, is, I would still contend, humanitarianism.

CHAPTER VIII

THE LINE OF ETHICAL DEVELOPMENT

1. Ethics as treated in the present work is the study of the regulation of life. This regulation, as we saw in chapter i., begins in the animal world. We find it, indeed, in the lowest grades of life. For while at this level intelligence, in the sense of the purposeful use of the animals' own experience, plays a small, perhaps at the bottom of all, a vanishing part of the matter, action is determined in almost every detail by methods of response to stimulus (internal or external) which are fixed by the structure inherited by each individual from its ancestors. There is every probability that these methods, which display a general, though by no means perfect, adjustment to the requirements of the organism are in an indirect sense actually determined by those requirements. In every generation individuals which gave the responses best suited to preserve themselves and bring offspring into the world would probably survive in the largest numbers, and by the constant repetition of this process structures, fixedly determining the most suitable response to each kind of stimulus, would arise and be handed on. In this exceedingly slow, cumbrous and roundabout method, some of the experiences of the past generation (those, namely, which directly affect life, death, and reproduction) determine the behaviour of the present generation, and so determine it as to aid in assuring the future maintenance of the race. Thus, from the lowest organic grades upwards we have a rough correlation of the past, present and future experience of the species.

The simplest responses so determined are, as we saw, of the Reflex type. These proceed with an almost unvarying mechanical sameness, with little, if any, adaptability to varying needs. But at a slightly higher stage there appear Instincts which, though they are generically inherited modes of response with essentially the same history and function, are more elastic in their operation and admit, as they expand, of correction by experience and modification according to varying requirements. Such instincts, as has been remarked, are not confined in their function to the service of the individual. They are directed to the production of the young as well as to the maintenance of the life of the parent. At a fairly low level they are directed, further, to the preservation of the young when produced. At first very rudimentary, parental care assumes more and more importance as we ascend the scale and as intelligence arises to assist it, but there is no reason to doubt that its basis is throughout instinctive. That instincts of this kind should arise in the animal world might, indeed, be expected from the operation of those conditions under which instinct has grown up. What we have supposed is that certain stocks have survived in preponderating proportion in so far as the behaviour of their members was well adapted for the maintenance of the stock, and the production and care for the young by each individual or each pair would be as important an element in this process as the preservation of each individual itself. Thus biology does not lead us to assume an original egoism or self-regard out of which altruism is evolved as a secondary result. Egoism is something at once too deliberate and too limited to be primitive. What we infer alike from biological principles and from observed facts is rather an unreflective, possibly a quite unconscious, impulse growing by heredity into a determinate instinct producing responses adapted to the maintenance of the stock by means of the maintenance of the life of the agent and its young.

In the lowest stages there is no reason to think that instinctive actions are accompanied by any sense even of the proximate end which they are adopted to secure. Not only so, but there are definite reasons for thinking the contrary. Such blind action we call generically Impulse. But far down in the animal scale we found cases in which impulses are arrested by pain or encouraged by pleasure. These introduced us to a new feature in the conditions affecting behaviour. The act of the individual is now no longer guided by the inherited structure, but, in these cases, by the effect of the individual's own past experience as well. The inherited structure is affected by experience, and the reactions which it will give are re-modelled accordingly, with the result that they are better adapted to securing an immediate benefit to the animal in the shape of a satisfaction obtained or a pain avoided.

It would be premature to call this modification of behaviour intelligent. But, still within the animal world and on the plane of instinct, we get a higher adaptation. We find actions which are modified, not because they are felt as pleasurable or painful, but because they produce pleasure or pain in the sequel. That is, the act and its consequences are distinct for the animal; and the relation between them seems to be intelligently rather than mechanically established in its mind, since *e. g.* an animal which has been punished for some darling sin will restrain himself under circumstances which might lead to detection, and enjoy himself when he feels secure. Here, as we find that action is successfully varied according as it does or does not produce a given effect, we may say that the relation of the act to the effect, that is the purpose, is the determining factor. Impulse so modified becomes Desire and Aversion. On the other hand, though we should say that it is desire for things that are pleasant (τὰ ἡδέα) rather than for pleasure (ἡδονή), it is still pleasure (and pain) that are the moderators of desire.

But the same intelligence which transforms impulse into desire renders possible the concrete apprehension of other individuals. To the higher animal, its master, its young, its friends, and its enemies are known apparently with some measure of individual recognition, and, moreover, their behaviour, what they do, what they express, and what is done to them, are often matters of lively concern. Hence, though we can no more see inside a dog's mind than inside that of another human creature, we attribute sympathy to the one as to the other, and if we allow the dog intelligent purpose in securing his own pleasure and avoiding his own pain, we must by the same reasoning treat as purposeful what he does for another creature, human or animal. So we may attribute, not merely the gregarious instinct, but also the rudiments of a social intercourse to the higher animals, and hold that their actions are adapted, not only by instinct, but also in some measure by conscious intelligence to the protection, relief, or satisfaction of those for whom they feel affection. Thus we now find a considerable enlargement of the sphere of intelligence. We find it aiding in the adaptation of actions not only to the immediate, but to the somewhat more remote satisfaction of the agent, and also to the satisfaction of others whom the agent loves. But in all this it must be remembered that the inherited psychophysical structure is the underlying condition. It is that which makes experience pleasant or painful, and it is this, for the most part, which renders possible and also limits the circle of affection.[1] The main lines of behaviour, social as well as self-regarding, are laid down by inherited structure in accordance with the conditions of race maintenance. Only variations within these lines are left to the play of intelligence. Nevertheless, this play increases the adaptability of the individual, enlarges the part which it plays in the world, and enables it to maintain the stock with a smaller number of descendants and with less waste of life.

---

[1] I mean, *e. g.* that though a mother cat may tend a kitten intelligently at times, yet the basis of mother love is instinctive. At this stage "natural selection" would even combat a wider love, since it would interfere with the predominance of any given stock which indulged it. So the conditions of race maintenance appear both as positive and negative determinants of social feeling.

2. While animal purposes, in the strict sense of the term, appear to be limited to the concrete results of each particular action, and, so far as directed to the good of another, to be swayed wholly by feeling, in man we saw that the rise of general conceptions—a process which may be regarded as at once the effect and the cause of the growth of language—enlarges the scope of purpose and renders possible the laying down of fixed rules by which action is judged and the handing on of these rules by tradition. Forming a concept of himself as a permanent being with varied interests, of his wife or children, his social group, etc., in the same manner, man re-acts to these larger interests just as the animal does to the immediate stimulus of desire. This re-action to larger purpose we have called Will; distinguishing it from Desire, because in it the whole personality tends to be involved rather than a single sense or a single emotion, and because its object is not that which gives pleasure, but those larger vital issues in which the more stable conditions of happiness are found. But the will does not set to work to construct its ends in a kind of vacuum of the pure reason. It finds itself guided and limited from the first by rules containing the traditions of society, and forming a standard by which the conduct of each man will be judged. These rules embody a tradition, the origin of which is for primitive man himself lost in myths. We do not, and probably never shall know in detail the actual stages by which the earliest customs originated. On the other hand, we do know something of the conditions by which custom in general is maintained and of the forces by which it is modified. We know, for instance, how customs change and grow and disappear unconsciously as an individual stretches a point here or makes a new application of a precedent there. We can see how the interaction of multitudinous forces transmutes custom and produces a new tradition before any one has been aware of the change, and we have no difficulty in conceiving the original growth of custom out of the inherited impulses of gregarious man as proceeding along the same general lines. It needs but

that these impulses should be formulated and generalized, and there is already custom in germ, and the growth of custom will be of the highest value to nascent society as enabling men to understand each other, *i. e.* to know what in given circumstances each may expect from the other. The lines on which custom is formed will, however, be determined in each society by no reasoned principle, but by the pressures, the thousand interactions of those forces of individual character and social relationship which never cease re-moulding what they have made—men's loves and hates, their hopes and fears for themselves and for their children, their dread of unseen agencies, their jealousies, their resentments, their antipathies, their sociability and dim sense of mutual dependence — all their qualities, good and bad, selfish and sympathetic, social and anti-social. We were able, however, on general grounds to lay down two limits within which from the first custom must move. First, it must bear some relation to the character of primitive man. That is to say, although custom doubtless imposes upon him many restraints, nevertheless those restraints in the main fall into line with his own fears, reluctances, sympathies, and antipathies, and do not deviate from them to the snapping-point. For if this point is frequently reached, not merely in exceptional individuals, but in the average member of the tribe, there must either be a change of custom or anarchy. This limitation will cut both ways, will equally prevent the level of social tradition from rising above or from falling below the level which in this rough manner corresponds to primitive character. The rule of conduct must in effect be so far adapted to the nature of primitive man as to embody much of what is bad in him along with much of what is good—his limited sociability, his hatred and dread of strangers, his craven fear of the unknown. Evil and anti-social impulses, in fact, contribute to the first formation of the moral consciousness, along with affections and sympathies and the dimly felt need of co-operation.

In the second place, the body of custom must upon the whole be suited to the conditions which make for the maintenance of society, since otherwise the society would not be found in being for any length of time. But once again, the beneficent efficacy of these conditions must not be exaggerated. In the first place, particular customs may be injurious provided they are not fatal. They may be the consequences of some idea which upon the whole makes for good order. Thus the taboo may be useful for the preservation of property. It may, however, have many useless or harmful applications. Further, when we speak of customs suited to the maintenance of society, we really mean the maintenance of a given social type. A custom which is quite necessary at one stage may block the advance to a higher stage, and if conditions are arising which make that advance possible, society will gain by its removal. The fact that custom rests on the requirements of social life does not render it inviolable in cases where those requirements have altered. However, when all these limitations are allowed for, it remains that without any reasoned conception of social welfare the broad conditions of stock preservation indirectly determine the main lines of conduct just as they do in the animal world, only those conditions no longer operate merely by fashioning the physical structure of the organism. They operate also through social tradition, and thereby once again are rendered more elastic, and are able to shape action over a wider sphere. The starting-point, then, for the development of human ethics is custom arising and maintaining itself, not through any reflective thought as to what is best, but by the play of human impulses within the limits of a life lived in social groups.

3. From primitive custom as our starting-point, we can conceive ethical development as proceeding along three different lines. We may conceive it as an evolution in ethical conceptions, in the character of human beings, or in the established relations of society. To consider first the movement of ethical conceptions, we have found it closely bound up with the development of thought in general, of ideas as to the nature and origin of things and the destinies of man. Now the evolution of thought, stated in general terms, consists on the one hand in growing precision or accuracy of analysis, on the other hand in the ever extending reach or grasp of experience, the result being a more and more articulate understanding of an ever larger segment of reality. In this development we may distinguish certain phases, though we should regard them rather as milestones that mark the advance in a single journey than as gaps parting distinct stages from one another. Bearing this caution in mind, we may briefly recapitulate what the previous chapters have shown. In the lowest stages of human thought, then, we have seen reason to think that the difficulty of forming any conceptions at all is such that the familiar categories of common experience are not fully distinguished. Attributes and relations become substances, while distinct individuals melt away into one another and preserve no clear-cut identity. There is no sound basis of generalization, no

methodical interconnection of ideas, and no adequate distinction between the imaginary and the real, or between make-believe and earnest. Inferences are formed by unconscious assimilation, by fusion or confusion of ideas, and by the influence of emotional prepossessions. Distinctions that are most elementary in the structure of knowledge are quite insufficiently grasped, and the result is seen in magic, witchcraft, and the primitive doctrine of the quasi-material spirit. It is a great step forward when the world of ideas begins to be purged of these confusions, and thought no longer blurs and obliterates the primary lines of distinction, the common categories into which experience falls. Persons now are persons, functions are functions, relations are relations. Concrete experience is reflected with sufficient distinctness in mental pictures or images, and the thought-world, instead of being a distorted and confused rendering of the world of sense, is rather its counterpart and duplicate. The gods at this stage form a second human community in another sphere. Pure fancy, or fancy guided by crude ideas of physical causation, plays freely round them and gives them a living personality, often a really concrete character, with family, social and political relationships, loves, hates, joys and sorrows, and complete life histories. Progress from the inarticulate to the concrete idea is thus reflected in the transition from spirits (and occult forces) to gods.

Now the gods are already not only human, but in varying degrees superhuman. They preside over great departments of nature or of human life, thus embodying a wider and more discriminating colligation of experience. But, further, they often show traces of idealization, and in this we get a hint that the world of ideas is destined to be something more than a mere re-duplication of sense experience. This brings us to the next step in advance, wherein image-making develops into thinking. The " picture " ideas, loosely defined and uncritically connected, are transformed into definite or " abstract " conceptions; the " general " notion vaguely applied into the universal, which, wherever used, has one constant meaning. Such concepts, of which those of number and quantity, and of Spatial and Temporal order, are probably the first to arise, are connected, developed and tested by systematic methods of analysis and synthesis—the concept once rendered exact being capable of methodical comparison with other concepts.

But beside the minor " departmental " conceptions which give rise to special sciences or to methodical arts, the fundamental all-embracing categories of experience also enter at length into clear consciousness. The mind had learnt in its image-making to represent Persons and Attributes, Relations and Functions, and to keep them distinct. It now learns to recognize what it is that distinguishes them, and so to form conceptions of Personality, Attribute, Relation, Function. In so doing, it has grasped and set before itself as distinct objects of thought the structural principles of its world. It is now in a position to attempt a theory of reality as a whole, to deal with the problems of permanence and change, of reality and appearance, of the finite and the infinite, and all the other antinomies which present themselves as soon as a serious effort is made to conceive a totality of things. Its theory of the world-process, its God, if it finds the solution in a God, is an embodiment, so to say, of the categories which it finds most satisfactory. God is infinite, absolute, unconditioned, the First Cause, perhaps the true substantial reality of things. He is also—since a foundation is required for practice as well as for theory—an incarnation of the moral ideal.

Here, then, we have reached the level of the philosophical, or, as we have called them, the spiritual religions, systems which seek to concentrate all experience in one focus and to illuminate all reality from one centre,—thought, as ever, becoming more comprehensive as it becomes more explicit. But such syntheses, however formed, contain in themselves the germ of contradictions,[1] the cause of which is not fully understood till thought has taken a fresh turn in which the genesis and function of conception in general is made the subject of inquiry. This, in its simplest form, is a return from the ideal to the actual, and as such is carried out in miniature in every special science. But the criticism of method has a deeper implication. It involves, when pushed through, an inquiry into the ultimate basis of knowledge, and the paradox of the inquiry is that since to inquire and examine is still to think, the very processes that are being examined have to be used in examining them. Nor can we who criticize place ourselves outside that which we are criticizing. The human mind is a structure which has grown up under conditions, and the thoughts which it forms and the criticisms which it passes on its thoughts depend upon that structure. Not only the thoughts, but the experience which they are to interpret is, again, conditioned by the structure of the sense organs. We are therefore compelled to regard the highest conceptions which the mind can reach as conditioned by the nature and limits of the mind itself, and to recognize that even though we could frame a theory which might commend itself to us as an adequate interpretation of our experience, it does not necessarily follow that it would express the final truth about reality. But further, when our conceptions are analyzed to the bottom they are found not to give an adequate interpretation of experience as a whole. On the contrary, it is when we endeavour to grasp our world as a totality that we fall into contradictions. Criticism, therefore, compels us to realize the limitations of our own thought, and to desist from the endeavour to force the universe into the narrow moulds which our experience has so far enabled us to frame, when what is needed is rather to enlarge our conceptions by taking in fresh experience. For it does not follow that because we find limits, these must be limits fixed for ever. On the contrary, the study of evolution indicates the possibility of indefinite growth. It helps us to understand how our mental structure has arisen from very humble beginnings, and how its methods, its logic and its philosophy have grown up in the continuous endeavour to grasp and organize its experience, and so direct and understand its own life. We measure a sufficiently great advance from the first dawn of consciousness in an animal which can just learn through pain, to the synthesis of the sciences and the analysis of philosophy, and we can in some degree judge thereby of the possibilities of further development. We can understand that what is readily intelligible to the highest human intelligence should be wholly inconceivable to a savage, and we must learn to understand that our own thought is no more final than that of the savage, but at best represents mental growth advanced by one stage.

---

[1] Speaking generally, these arise, as appears further on, from the mental attitude which takes the categories as vehicles of ultimate truth, rather than as modes of rendering experience and interconnecting experiences. The more the "metaphysical stage" develops, *i. e.* the more the mind disengages itself from imagery, and insists on exactitude of conception and reasoning, the more clearly the inherent difficulties of this point of view emerge. The contrast between the hard insufficiency, the narrow finiteness of the categories and the subtle plasticity, the boundlessness, the variability of experience becomes almost disruptive of thought. At times it forces the mind by a confusion of planes to find reality in the categories themselves, and not in metaphysics alone, but in many departments of ethics, politics and law, the lines of distinction and definition which conceptual thought draws become stones of stumbling when gradations of meaning and the actual continuity of nature are to be dealt with. The world of thought tends to fall apart from the world of experience. But thought is meaningless unless it illuminates experience. This, as already indicated in principle by Aristotle, is the starting-point of criticism, alike of the special criticism of a particular science and of the general criticism of philosophical analysis.

It does not follow that we are landed in mere scepticism. The thought which gives harmonious, coherent interpretation to experience is true so far as it goes. It is only as a final interpretation of Reality that it is never the whole truth. Yet a philosophy which does not yield final truth may have its value as an approximation. Each new interpretation, provided it is honest and intelligent, carries us a stage forward. The error is only in taking the completion of the stage for the end of the journey. Truth, even ultimate truth, is no empty dream. She is a phantom only when we think that we grasp her. She is real when, recognizing that she is a being enthroned above us, we are content to touch the hem of her robe.

The tendency of the critical movement which constitutes philosophy is therefore to trace the conceptions, methods and principles of thought to their elementary conditions in the nature of mind and its relations to reality. Starting from these conditions it re-models the whole idea of knowledge and of the nature and test of truth. Reality is conceived as something more than experience, and the truth attainable by man is seen to be only a partial approximation to the final truth of things. As a consequence thought is recognized as a growth, and its conceptions as the products of a given phase, having their genesis in earlier phases, and the test and measure of their validity in their power to contribute to that coherent, systematic interpretation of reality towards which growth aspires.

Thus, in dragging to light the conditions of the cognitive process and the factors at work in the building up of thought, the philosophic movement renders the mind conscious of its own nature and history. Here it impinges on the results of the physical and social sciences which have been building up the conception of evolution, and the effect, according to the view of contemporary thought here taken, is to establish the conception of mind in growth as the central fact of experience and the basis from which we must start in the further interpretation, alike of knowledge and of conduct.

4. Turning from the movement of Thought in general to the special sphere of Ethics, we have now to summarize the evolution described in the previous chapters. The resulting picture of the phases of Ethical development will show a rough parallelism with that of Thought in general. This could hardly be otherwise, since the two movements are in constant interaction. At the same time, since other influences affect ethics the parallelism is not exact and must not be exaggerated, and this caution must be taken as qualifying the general descriptions which a summary statement can hardly avoid. We have to

consider the evolution of the ethical idea, as it were, in its depth and breadth; that is to say, in the degree of clearness and intensity with which its distinctively ethical character is realized, and in the extent to which it succeeds in directing conduct and organizing life. In this evolution we have found several phases. Now the general features of the ethical idea, according to our analysis in the last chapter, are that every man as a responsible agent stands under certain obligations, whether to himself, to others, or to society as a whole, defined by the requirements of the common good; or, in other words, that men are deemed good or bad in accordance as they do or do not recognize certain rights and duties important to the welfare of society as a whole. Obligation is the general expression for the relations in which men accordingly stand, and it is (*a*) in the way in which obligation is conceived, and (*b*) in the conduct which it covers, that ethical evolution is principally seen.

Now in the lowest stage of customary ethics obligations of a social character are undoubtedly recognized in a certain sense, but (1) they are almost entirely limited to the relations of men and women in small groups, and (2) though they tend to secure certain fundamental rights, yet the protection that they give is in large measure indirect. For example, human life is protected by the blood feud, but the custom of the blood feud is not based upon the principle that human life is itself sacred, but on the principle that I must avenge a wrong done to a member of my kindred. Property is protected by the law of restitution or, within limits, of blood vengeance, yet when we look into the matter more closely we find that it is not because the thief ought to be punished, but rather because a man who has suffered theft may reasonably demand restitution or avenge himself. Similarly, the marriage tie is maintained in the sense that any husband may reasonably be expected to kill a man who violates it. The idea of justice is not separated from that of retaliation. Thus, the elementary rights and duties on which social life is founded can hardly as yet be said to be recognized as rights or duties, that is to say as matter of direct moral obligation, even in relation to fellow-members of the same society.[1] Nor again, is character as

---

[1] It may be said (1) that, after all, there are from the first certain laws directly enforced by society, (2) that within the innermost group the general obligations of mutual aid and mutual forbearance are often, if not always, true "categorical imperatives." Both objections are valid so far as they go. But (as shown in Part I. chap. iii.) they only cover a section of the sphere of conduct. Many fundamental obligations are only recognized in the indirect sense explained.

It may be urged that it is all a question of group-morality, that within the innermost group obligation is directly enforced, and that the tribe or yet, strictly speaking, the subject of a moral judgment. So little is this the case that primitive justice draws a very insufficient distinction between the intentional and the unintentional or between the agent and his relatives, and even personal identity is not clearly conceived when the actions of a man may freely be attributed to a spirit which possesses him temporarily.

This view of customary morality is supported by what we know of primitive ideas as to the basis of custom, for in the lowest grades of ethical thought the sanction of conduct is found in taboos and other magical terrors or in the fear of vindictive and resentful spirits. But the powers of magic have no moral purpose, and the spirits of animism are neither essentially moral nor immoral. In general they are guided, like men, by the law of retaliation. But the mere dread of vengeance from a spirit has no more morality in it than the corresponding dread of a man. On the whole, then, social rules in this stage, though doubtless supported by ethical feeling, are not yet clearly conceived as moral obligations.

A step onwards is taken when certain rights and duties are attached to members of a society as such, when, *e. g.* it becomes a duty to protect life instead of merely aiding the avenger, to guard property instead of only countenancing retaliation upon the thief, to redress wrongs and yet in so doing to entertain questions of responsibility. This stage appears distinctly in the earlier civilizations, though remnants of cruder barbarism, of course, survive. The essential features of group-morality are still retained. Obligations do not in principle exist in relation to those outside the group, and the moral consciousness is still drenched through with the old spirit of self-assertion, the passions appropriate to the struggle for existence among small and ill-organized groups of mankind. On the other hand, certain social duties are now matters of direct obligation. The basis of this obligation is still in the supernatural, but with the development

---

community is merely to be regarded as a wider group not yet fully brought within the area of obligation. But this account would not comprehend all the facts, viz. (1) that the "wider group" here spoken of is normally a true society, the different members of which meet and mix freely. The later group-morality leaves out the stranger or the slave, but this earlier rule of custom does not properly include the associate and the equal. (2) That the "subjective" side of morality as shown in the text is undeveloped. (3) That the magico-animistic basis of obligation is distinctly non-moral. Bearing in mind that we are nowhere in contact with the actually primitive, we may put it that the moral conceptions found in the simpler societies are such as we should expect at a stage in which morality proper, as a system of impartial and unconditionally binding rules, is still in process of formation.

of religious ideas it tends to take a more ethical character. The deities, heroes and ancestors of the anthropomorphic religions, which on the whole are dominant in the higher barbarism and the earlier civilizations, are morally superior in the main to the animistic spirit, and would be still more so but for the persistence of myths dating from the animistic period. They are generally—though with some terrible exceptions when magical ideas persist—at least as just as a fairly good man, they are opposed to demons and to witchcraft, and in some instances they have an element of the ideal. Moreover, some gods or perhaps some specially developed spirits often undertake the special protection of the moral law or branches thereof, and one or more of them are often judges of the dead. Thus, at this stage it is not uncommon to find that there are some gods who stand in an essential relation to ethics, and, though the fear of punishment is not a high motive, yet a god who punishes acts because they are wrong is very different from a god who merely avenges an injury. His existence is a recognition of the moral idea. But the spiritual needs imposed by the conception of judgment are insufficiently met at this stage by sacrifice or magical rites instead of repentance and forgiveness, and even if the gods prefer justice they are hardly as yet incorruptible judges. Considering morality as a whole at this stage we may say that certain social duties are recognized as obligations, and obligation is based on human and divine sanctions. But just as the social code is a confusion of "love and hate," so the divine world is a blur of the just and the unjust, the righteous and the tyrannically wicked. There is as yet no thoroughly worked-out ethical ideal, human or superhuman.

It is the emergence of such an ideal which gradually transforms the primitive code of blended love and hate. In close connection with the spiritualized ideal of religion, an ideal of character is set up in which there is no room for the virtues of enmity; forgiveness replaces the duty of revenge, self-sacrifice the exaction of one's due; the humility of self-suppression supplants the pride of self-assertion, missionary effort for the salvation of all mankind the narrower and more material ambitions of self, or family or nation. This implies a profound modification of the original moral consciousness which, arising under the influence of division into groups, has the anti-social or disuniting blended with its social or binding tendencies. The principal change that moral history records is the subjection of this side of morality to the purely social element in the moral consciousness. It is paralleled by a no less revolutionary change in religious thought. The materialistic deity disappears. God is spiritual, and the non-spiritual elements of His worship are gradually eliminated. True, the judgment of the dead (or as an alternative certain automatic consequences of good and bad actions) hold a prominent place in the spiritual religions, but for the best minds the notion of retribution as a basis for morality is already transcended. God rules by love, and not by fear. On the other hand, in so far as the omnipotence of the Creator and the necessity of faith in Him as the basis of all goodness are hard pressed, the ethical falls into the second place and may even be opposed to the religious view. And the actual content of ethical teaching is affected by the position which it holds. Though the social qualities are emphasized, their social function is often misunderstood, and self-suppression rather than development is the central point of the ethical ideal. And thus, though the teaching of the world religions laid the foundations of humanitarianism, it has often tended, paradoxically enough, to paralyze humanitarian energy, and by holding up an unrealizable ideal to remove virtue from the world and make it possible only in the monastery.

At this stage, then, moral rules have references to a distinct ideal of life and character. This ideal still rests on some supernatural mode of being, but the supernatural is itself the incarnation and expression of moral perfection. Idealism, however, is not necessarily critical, and a further step is taken, according to the view put forward in the previous chapters, when the attempt is made to set out systematically the full implications, personal and social, of the moral judgment.

The attempt to construct or reconstruct the ethical order upon the basis of a reasoned theory of life was initiated by the philosophic movement of antiquity, which, though it appealed less strongly to feeling and missed at the outset some grace and tenderness of the religious ideal, left the individual personality standing, and made the development of its faculties rather than their repression the end of conduct, recognizing that individuality has its claims, that even original self-assertion contained a kernel of truth, and that what humanity claims is self-devotion rather than self-effacement. But in proportion as the idea of personality becomes the centre of ethical teaching, it must follow that rights and duties are regarded as belonging to every human being as a responsible agent, and that human character, the development of faculty and the living happiness of men and women, become the ends of life. A direct consequence of this view is that the duties and rights formerly dependent on membership of a group are now universalized. But with this universalism all of primitive custom that belongs to the law of enmity drops away, and the law of love is reached by another road and under another name. Humanity becomes a single community, and the Law of Nature—an ideal by which all positive law should be judged—prescribes our duties as members thereof.

But we are still only in the first phase of rationalism. The content of philosophic teaching required the inspiration of religion to be converted into a living universalism, the object of a missionary effort seeking actively and aggressively to spiritualize in the world. In this change as it was historically effected the rational basis was undermined, and modern rationalism, instead of working continuously from the Greek basis, had to compass the return from the supernatural to nature. In so doing it (*a*) gave a social and positive interpretation to the doctrine of salvation, and thus applied the aggressive energy of religion to the spiritualization of actual life, while (*b*) it replaced the conception of "nature" as a fixed and ideal standard by that of development—a process which can only be rightly appreciated after allowance is made for the thinker's position within it. Our standards are the product of a spiritual movement at work within the race, and are subordinate to its ultimate ends. These ends we can appreciate at least in so far that they include the fullest and most harmonious development of the life of the race, and as such they serve as stimulus and guide to every form of noble effort.

The ethical order being thus interpreted, the claims of duty are urged on the ground that when we thoroughly understand its nature and all its bearings on our own life and that of humanity, we are compelled as rational beings to recognize its validity, and admit that the ends to which it points are wider and greater than any private good of our own that may conflict with it. Thus for rationalism the moral basis lies in the unfolding of the full meaning of the moral order, as that through which the human spirit grows.

To summarize the whole evolution in the fewest possible words, it would appear that at the outset customary rules have not acquired the distinctive character of moral laws. Next, moral obligations are recognized, but are not yet founded on any general ethical principle. Up to this point the morality of primitive social tradition persists, wherein "love and hate," the social and anti-social impulses are blended. In a third stage, moral principles and ideals of character and conduct are formed, partly by the influence of religious emotion, partly under the guidance of philosophic criticism, and these culminate in the doctrine of an evangelizing mission with the salvation of mankind as its aim. But this salvation is conceived in supernatural terms, and reasoned ethical principle is subordinated to religious belief. Hence a further critical movement is required, constituting a fourth main stage in which the meaning of religious duty is interpreted in terms of human experience, and it is the development of the spiritual principle at work in the actual life of man that becomes the object of religion and supplies the canon of ethics. We may describe the whole process as one in which, by successive steps, the full meaning of the ethical principle becomes clear. Obligation, resting at first on occult forces or the resentment of vindictive spirits, and then on the wrath of a not unjust god, comes to be based on the nobler desire to be at one with God, or to realize a higher spiritual life and, finally, extrinsic consequences being dispensed with, on the inherent goodness of the life which it renders possible. The social bearings of morality emerge by a parallel process. Duties at first indirectly guaranteed become directly inculcated. Next, they are so extended as to overleap the bounds of group-morality and destroy the claims of self-assertion. Finally, the reason of the thing is rendered clear in the exposition of a spiritual development as the source and object of duties and rights alike. By successive stages obligation becomes first a distinct element in consciousness, and finally a principle, the whole meaning of which is gradually thought out.

5. With the deepening consciousness of ethical meanings goes a wider and more coherent synthesis of experience and purpose. Primitive morality (whether in the first or second stage) builds up bodies of custom, introducing a measure of order into life. These rules are in an indirect manner fashioned by racial experience, since they are handed on by tradition, and their effect upon the social welfare can seldom be without an influence in determining them. To this extent early morality may be said to direct conduct towards social welfare on the basis of past experience. On the other hand, the rules of conduct are not combined into a whole or harmonized by subordination to any clearly understood principle, whether an ideal of personal conduct or of social organization. On the contrary, they are in large measure such as to justify social disharmony.

In the ethics of the spiritual religions the correlation is more complete. There is an ideal of character, a principle of right-living, to which all rules of conduct are subordinated. And this, being a rule of peace and love with all the world, contains at least the potentiality of a complete synthesis of human purposes. On the other hand, there is little disposition to take the actual experience of mankind into account, and in effect the tendency is to idealize one side of virtue—self-negation—and leave no room for the conception of self-development. On the social side also, though many of the best social virtues are exalted, there is a tendency to disregard the actual working of society as a merely mundane affair. Thus, though there is an express and deliberate correlation of the conceptions of good conduct, it is of a kind which leaves much that is most valuable outside its scope.

The philosophical movement, by its criticism of the conceptions of good and bad, aims at a fuller correlation. Greek philosophy harmonized self-development with the common good of the city state, but had behind it less of the spiritual experience which builds up the idea of self-negation and none of the social experience which could give life to the conception of a world polity. Modern thought, bringing ethics into relation to the theory of development, conceives a synthesis of which the total recorded experience of the race—an experience always operative, though in earlier stages less consciously—should be the basis, and the further development of mind in society the end—a correlation of past and future racial experience.

It helps us to understand the character of ethical, as of all mental evolution, when we observe that at each stage the mind as it expands brings within its scope the conditions and influences which have previously acted upon it unawares, but that in so doing it rationalizes and therefore modifies them. Thus the custom of the blood feud is enforced because it is custom, or nominally because it so pleases the gods. But the real value of it is that it tends to secure life. This is the latent or unconscious factor which fosters the institution in early society as making on the whole for order. In the next stage this factor enters into consciousness, and protection to person becomes a right and to recognize it a duty or a virtue. But words such as "right," or "virtue," carry weight only because men make moral judgments, approve certain types of character, etc., and the implication is that a certain type of character, or of social or religious life, is the guide and norm of conduct. Accordingly the next step is that this ideal enters consciousness and is set before man as his end. But, lastly, the influences which determine him in his preference of one character over another are a complex mass of traditions, instincts, partial reasonings. What is coherent in these appears to be what makes for the growth of mind in man, and the final step is to bring this aim into consciousness as a rational principle and the base of what went before. In looking backward over the process which has led us to this point we realize that the same factors, though not in the same rational form, have been present all along. The conditions of maintaining a social life operate in the very formation of social instinct and tradition. Custom, that is to say, is fixed by certain psychological forces and inter-relations of man and man, which arise, and are maintained, and grow, because the society which they engender can support itself in its environment. These forces all along underlie the work of consciousness, until bit by bit consciousness encroaches on them and takes them into itself. In so doing it transmutes them with something from its own quality. It makes them rational ends, and as such into forces that make not merely for life, but for a good life, and a life of growth and development.

Though the phases of development here distinguished pass into one another by such gentle transitions that the very attempt made to distinguish them may appear artificial, the total change which they constitute is of no small importance. Taken as a whole it forms a distinct stage onward in the evolution of mind, not unfairly comparable to that which parts the mind of the lowest savage from that of the beast which he chases and adores. Just as mental evolution enters on a new phase—a change of kind so far as the phases of a continuous process are ever changes of kind — when the nascent human intelligence formulates for itself in general ideas experiences which were already operating to direct its inferences, though before it knew them not nor named them, so a gradual but not less fundamental revolution is effected as the "eye of the soul is turned" upon the methods by which these generalizations are built up—that is to say, from the objects of thought to the processes by which they are formed, the conditions on which they rest—in a word, to the mind itself, its nature and potentialities.[1] At the beginning of this revolution the thought world is occupied by the fragmentary and confused ideas of the primitive mind, moulded without criticism in accordance with mental predispositions out of the mass of unsifted experience and tradition. At its end, as the result of a movement which extends from the first attempt to observe a fact or define an idea to the profoundest analysis of the conditions of the cognitive process, is the synthesis of racial experience in which the mind grasps the conditions and possibilities of its own development, conscious for the first time in the full sense of its own nature and growth. This movement has its close parallel in ethics. At the beginning is custom, with its blend of the ethical and unethical, accepted without criticism and guiding life without system or general plan. At the end is the rational order of conduct founded on the conditions of human development, and directed to the furtherance of that development as its supreme end. If, finally, we put together the results of the intellectual movement which reveal the conditions of development and of the ethical which make its furtherance the purpose of life, we recognize that the evolution of mind in man, from being a blind, unconscious, fitful process has become a purposive, self-directed movement. This is the fundamental change effected in the course of human history.

---

[1] For we are dealing here with an order of reality—the ultimate conditions of knowing and being—which underlies the simple general truths of common sense just as these underlie the concrete and practical relations recognized by the animal mind, and to do so implies a new turn to mental activity—the bringing into consciousness of methods and processes—which is quite as profound a change as that involved in the first attempt to draw out the "universal" that lies in the particular.

6. So far we have traced ethical evolution as an evolution of thought. But in questions of morals it is easy, fatally easy, for thought to outstrip action. How far, then, does this development of conceptions correspond either to an actual improvement in social relations or in the character of human beings? The candid student cannot but feel grave doubts on this question from time to time when he turns from the disorders and tyrannies of our own day to the simple and harmonious life which he finds among many of the "lowest" peoples. May it not be, he is forced to ask, that at bottom the moral factor is, so to say, a permanent quantum not susceptible of constant increase or diminution, unaffected in essence by intellectual progress, but rather liable to grave lesions by social changes against which it recovers itself from time to time, so exhibiting the misleading appearance of periods of moral progress. Thus it may be urged that the genuine humanitarian progress of the Victorian era was but a desperately needed reaction against the tremendous social disorganization of the Industrial Revolution and the Napoleonic wars, and now that it has made things tolerable is in turn relaxing its efforts and giving place to the creed of force and the self-centred will. As against this view it may be maintained that we may easily overestimate the moral value of harmony in the simpler social conditions. Social solidarity is one thing in

a group of a couple of dozen men, women and children, and another when it is predicable of a nation of forty millions. Moral progress consists in surmounting difficulties and uniting elements which are naturally opposed. Simple societies may enjoy a measure of practical freedom and equality which is lost at a higher stage. But the discipline, the organization, the output of will-power evinced at such a stage are equally necessary to the permanent progress of human achievement. The intensive life of the small community has advantages which are lost in the ordered union of a great empire, but the extension of the area of peace is a step which advancing civilization must take. Social evolution is full of these antitheses, and the case for effectual moral progress is that, upon the whole, it makes for a synthesis. It goes for little to have the gentler qualities without the more assertive, chastity without passion, meekness without courage, liberty without the capacity for discipline, equality without the opportunity for domination. Repeatedly one limb of the antithesis grows at the expense of the other, and loss or gain may be recorded as suits the bias of the observer. On the whole, our survey goes to show that while no new elements arise, while human nature is fundamentally the same, the synthesis effected in the actual life of the modern state, incomplete as it is, is wider, fuller and richer than that of earlier times. The will grows—understanding by the will the organized energy of social endeavour. It is at once more masterful and more disciplined, wider in purview, firmer in grip, and, on the whole, more conscious of its true purpose.

In Social Evolution as a whole there is, in fact, a correlation, however rough and irregular in detail, with the ethical and religious development here set out. Among many simpler societies we see (1) the fundamental institutions of the family and government still very incomplete. We trace (2) the growing consolidation of the little community on the basis of kinship, then (3) the extension and improved organization of society on the principle of Authority and (4) finally, the advance towards a harmony between liberty and authority in the state. In the first two stages we have the morality of custom gradually passing into that of impartial law. In the third we have the reign of law and in its higher phases the ethics of the world-religions. The fourth is associated with humanitarian ideas. At the same time social growth does not always go with ethical progress. Social changes are in large measure unconscious, uncontrolled by any intelligent direction, and the more completely so the further we go back into the beginnings of history. Hence they do not run precisely parallel with the growth of mind, but at times impede, at other times, again, forward it. But as the higher phases are reached the two processes fuse into one. For the state rests on a measure of Right in the relations of men, and is so constituted as to be modifiable by the deliberate act of the community. In the method in which changes are effected, indeed, we find a definite evolution from the unconscious and unnoted changes of custom, through the deliberate changes introduced on occasion by the fiat of authority to the organic legislation of the modern world in which at its best there is an effort to determine social progress in accordance with a rational ideal. When this stage is reached social and ethical evolution become one. This union becomes realized in proportion as the mind attains that control over its own growth which it already possesses over the processes of nature. Here, as Comte first made plain, lies the true significance of the history of science. Through science mind dominates nature; first physical nature, then organic nature, lastly the conditions—physical, psychological, social—of its own life and growth. This movement goes on at an ever accelerating rate, and as it proceeds the conditions of a rational guidance of social life are one by one being satisfied. At the basis of these stands the mastery of external natural conditions, in which regard the last hundred and fifty years have witnessed a complete revolution, and so far there is every indication that the changes of the coming century will be not less, but even more sweeping. Next come the laws of life, the conditions of health, the causes of disease, the factors of physical evolution. The scientific treatment of these subjects can scarcely be said to be more than seventy years old, and it may be maintained without exaggeration that, little as we know even now, the sum of what we have learnt in that time as to the true causation of disease, as to the nature of heredity and the modifiability of organisms, far outweighs all that had been learnt in the previous two thousand years. There follow the laws of mental growth, and here our own time has witnessed the emergence of psychology as a science, and education as a true art aiming at educing from the mind what is in it, aiding natural development, and stimulating or correcting it at need, as the physician follows the efforts of the body towards the restoration of the balance of health—the whole a conception still in merest infancy, but already promising a vigorous life. Here, then, we have the conditions forming for development of body and mind and their maintenance in health. To these have to be added the scientific adjustment of the relations of man to man—

sociology. Here, again, we have a science in its infancy, but the mere attempt to deal with public questions in the spirit of science implies an advance ethical as well as intellectual. At any rate it is on the possibility of controlling social forces by the aid of social science as perfectly as natural forces are controlled at present by the aid of physical science, that the permanent progress of humanity must depend.

7. For progress is not something that goes on of itself by an automatic law or an inherent tendency of things. The struggle for existence is not as such a force that makes for betterment, and in fact in human history we find epochs of progress followed by long ages of stagnation or retrogression. If the evil of the world overthrew the doctrine of unconditioned creation, the disorders and reactions of history are no less fatal to a purely teleological doctrine of the world process. There remains the possibility, however difficult to conceive in concrete shape, of a spirit subject to conditions and achieving its full growth only by mastering them. If this view is correct, progress is made only in so far as the conditions of life come more and more under the dominion of Mind. There is nothing in the scheme of organic evolution to determine that the higher type should prevail except the inherent strength of the type itself.[1] On the other side of the account let us bear in mind that there is no evidence of any permanent force working against the higher type as such, or singling it out, as it were, for destruction. Evil is not a positive force. There is no real Ahriman that strives with Ormuzd. Evil is merely the automatic result of the inorganic. Physical evil results from the impact on the spiritual order of natural causes which intelligence has not been able to subordinate to its ends, moral evil from the clashing of purpose in minds which have not been brought into an organic unity. Hence the working of that retributive principle in history whereby whatever is evil, being inorganic, conflicts with itself and perishes " by its inherent badness," while the elements of goodness, of rational harmony, in the long run support and further one another, and this upon the whole at an accelerating rate in proportion as they have already acquired organic union. Here is that internal inherent strength on which the spiritual order depends for its ultimate victory.

---

[1] In so far as it bears on the ultimate question of the element of purpose in Reality as a whole (as distinguished from the scheme of organic evolution), this statement should be qualified by the considerations advanced in *Mind in Evolution*, pp. 402-406, and more fully in *Development and Purpose*, Part II.

Thus the principal method of spiritual progress lies in this—that what is achieved at one epoch is a starting-point for fresh development. Hence progress is sure and continuous in proportion as it depends on the principle of tradition, *i. e.* in proportion as the gains of the past can be handed on and form a capital for advancing the operations of the future. This method is most readily applicable in the case of positive knowledge, wherein it is possible for every student to equip himself with all that Newton or Darwin have to teach. But when something more than mere learning is required, other factors enter in. Even in the realm of thought so far as the deeper principles are concerned, every man must in a measure go through for himself the processes which Hume or Kant thought out, if he would really understand what Hume and Kant mean. Still more is this true of moral thought. We must have some spiritual experience of our own to enable us to realize what the message of Christ or of Buddha means. There must at least be an inward mirror to reflect the spiritual light. Hence ethical truths have sometimes been lost, or at least have lain dormant till new prophets have arisen to inspire them with fresh life. Nevertheless tradition, the mere contact with great ideas, counts for much in the ethical field, and there is, on the whole, a clear though not an uninterrupted advance of ethical teaching.[1] But when we come to the development of character, the third point of ethical growth, the case is altered. So far as ethical teaching affects character, tradition has its influence. But so far as the foundation of character is inherited by each of us from his parents wholly different conditions apply, and the question whether the innate characteristics of men tend to improve, stands on a wholly different footing from the question whether their collective achievements in the realm of thought and of conduct exhibit growth and development. The data for deciding this question do not appear as yet to be sufficient. The laws of heredity are in large measure unknown. So far as natural selection is concerned, its operation is known to be extremely slow, nor could it be favourable to character unless the conditions of life in society were through many generations such as to eliminate the more selfish, less honest, less generous type, and preserve in greater degree those who are more worthy. How far this has been the case I must not here attempt to determine. We can easily imagine that some virtues, such as parental love, have been fostered by the better chances of survival enjoyed by the children of loving parents. Of other virtues it is less easy to speak with any certainty. At many periods social institutions have directly tended to eliminate the stock of those best fitted to serve society. I think, for instance, of religious persecutions, or again of the ideal of celibacy which over great tracts of the world operated for centuries to deter many of the best men and women from perpetuating their stock. Nor is the question whether, morally considered, the human breed has in fact improved, by any means easy to settle empirically. Considering the improvement of ethical conceptions, is the actual improvement in our conduct as compared with that of our ancestors greater than we might expect, or even as much as we might expect? He would be a bold man who would found an argument for the improvement of the human breed by heredity on a dogmatic affirmation in reply to this question. Upon the whole we must be content for the present to leave this factor in evolution an uncertain quantity. Ethical progress is essentially a progress in ethical conceptions, acting through tradition.

---

[1] The bearing of tradition on progress may be measured by comparing knowledge, morals and art. Knowledge — the whole collective achievement of thought—takes the lead in progress because each generation can acquire the whole possessions of the past unimpaired and add to them its own. In ethical theory this is less easy in proportion as what is required is the deeper thinking-out of principles rather than the addition of past experiences. Nevertheless, the road once trodden is always easier to traverse anew. In ethical practice we have not only to learn, but to come to be, and this in large measure each must accomplish for himself, yet tradition still operates in that it is incorporated in law and custom and the spirit of a people. In art there seems to be epochs of progress in which some new vein is struck out by pioneers. This is worked by one artist after another, each learning from the last, till the best that can be done along that line is reached. The vein is then exhausted, and subsequent work along that line produces less and less ore and more and more dross. Tradition at this stage becomes a real barrier to progress. Meanwhile other pioneers are striking out in a fresh direction, and art revives in a new place. The cause of this brokenness of its history seems to be that the function of art is to give perfect expression—that is, expression in which the feeling-tone of the sense-symbols used precisely fits the thought expressed—to whatever facet of experience the artist seeks to approach. When this is once done adequately it cannot be done again.

These conceptions, as they advance, are, as we have seen, in a manner realized in law and custom. Here the element of tradition plays its part. But in so far as the old vices of character remain, the work is always liable to be undone and needs constantly to be done over again. The very growth of society sets up new problems needing a re-thinking of old ethical ideas, so that here again the ethical advance is fitful and uncertain. As society becomes larger and more complex many of its obligations become more remote and impersonal. Losing their direct application to our neighbour whom we see, our charity and our sense of justice are diluted and lose their strength. Our sympathies cease where our imagination fails to reach, and the great fabric of government is apt to become an inhuman machine advancing blindly over the living flesh and blood that happens to come in its way. Yet the vaster the social organism the greater is the triumph when justice, kindled to new life, has again sent a purified blood through its arteries. Its successes are achieved for larger portions of mankind, and their basis is wider and more secure.

But if our general conception of evolution is correct, the further development of society will follow a very different course from its past history, in that it is destined to fall within the scope of an organizing intelligence, and thereby to be removed from the play of blind force to the sphere of rational order. Such a change must be gradual and attended with many set-backs. The very ideas which are to direct it are yet in their infancy. Yet the social self-consciousness which gives them birth, arrived at as it is by a blending of the moral, the scientific and the religious spirit, is for us the culminating fact of ethical evolution. But such an end can only be a beginning. Mind grasps the conditions of its development that it may master and make use of them in its further growth. Of the nature of that growth, whither it tends and what new shapes it will evolve, we as yet know little. It is enough for the moment to reach the idea of a self-conscious evolution of humanity, and to find therein a meaning and an element of purpose for the historical process which has led up to it. It is, at any rate, something to learn—as, if our present conclusion is sound, we do learn—that this slowly wrought out dominance of mind in things is the central fact of evolution. For if this is true it is the germ of a religion and an ethics which are as far removed from materialism as from the optimistic teleology of the metaphysician, or the half naïve creeds of the churches. It gives a meaning to human effort, as neither the pawn of an overruling Providence nor the sport of blind force. It is a message of hope to the world, of suffering lessened and strife assuaged, not by fleeing from reason to the bosom of faith, but by the increasing rational control of things by that collective wisdom, the εἷς ξυνὸς λόγος, which is all that we directly know of the Divine.

INDEX

ABORTION, 468, 524
Adoption of prisoners, 238
Adultery, 185, 455
  Punishment of, 74, 76, 89, 91, 119, 135, 150, 174, 181, 186, 192, 193, 195, 201, 205, 209, 222
Aged, treatment of, 340–1, 343, 345
Ainu, 166, 244, 339, 379, 432, 440
Alabaster, E., 52, 87, 109, 194–6
Aliens, 259, 297, 298, 338, 339
Altruism, 580
Ambrose, 214, 215, 262, 510, 520
Amélineau, 186, 247, 342, 343
America—
  British Colonies in, 125
  United States of, 127, 142
Amos, 490, 492, 495
Anabaptists, 522
Angels, 500–2
Ani, 186
Animals—
  Duties to, 475
  in human form, 484
  Intelligence among, 7–10, 613–16
  Parental affection among, 6, 10
  Punishment of, 86, 87
  Regulation of behaviour among, 1–10
  Social life of, 1, 6, 10
  Worship of, 377, 407
Animatism, 374
Animism, 367–80, 383–7, 397, 405, 624
  in early civilization, 406, 409, 412, 415
  in relation to morality, 419, 424–30
Anselm, 507
Anthropomorphism, 403–5, 407, 409, 414, 416, 426
Antisthenes, 562
Apastamba, 189
Arabs, 373
Arbitration, 258, 267
Aristippus, 562
Aristotle, 65, 204, 205, 257, 258, 517, 554 seq., 565
Asceticism, 473, 524
Asoka, 483
Association, right of, 361–4
Assyrians, 249
Atonement, 444, 445, 507
Augustine, 262, 263, 449–501, 509, 510, 520, 522, 582
Australians, 235, 241, 369, 370, 382, 390, 391, 395, 396, 419, 434
  Exogamy among, 45, 46, 135, 143
  Justice among, 75, 82, 89, 95–8, 103, 107, 117
  Totemism among, 45
  Tribal structure of, 45–6, 52, 136–8
Authority, principle of, 55 seq., 69

Babylon, ancient, 133, 248, 249, 380–2, 343, 406, 412–15, 441, 442, 450–2
Bancroft, H. H., 72, 73, 92, 95
Batchelor, J., 166, 244, 339, 379, 432, 440
Baudhayana, 189, 344
Benefit of clergy, 123, 309
Benefit societies, 348
Benevolence, 343, 381–3, 488, 536, 538, 542
  and Justice, 533
Bentham, J., 125, 587–90
Biot, 253
Birth-rate, 6
Blackstone, 219–22, 309
Blessing, 421
Blood-feud, 73 seq.
  and composition, 75, 78
  and retaliation, 73
  Gradual suppression of, 99–102
  Mitigation of, 100 seq.
Boaz, Dr. F., 50, 90, 92, 162, 322, 323, 390, 394, 395, 426, 432, 434, 441
Book of the Dead, 185, 341, 443, 450, 452–5

Brahmanism, 459, 461, 470 seq.
  Doctrine of austerity, 472
  Doctrine of charity, 472
  Doctrine of penance, 472
  Ethical conceptions, 472–7
  Theory of reality, 477
  Theory of the self, 470, 471
Breasted, J. H., 108, 109, 328, 410, 411, 457
Bridges, J. H., 593
British Empire, 228, 229
Brown, W. Adams, 498–9, 503, 506
Bruns, C. J., 90, 206–8, 236, 425
Bryce, Lord, 207, 208, 210, 217, 230
Buddhism, 127, 459, 477 seq., 514–18
  Doctrine of Karma, 478, 479
  Doctrine of Nirvana, 478
  Ethical conceptions, 475, 479 seq.
Buddhist Suttas, 479, 480, 482–3
Budge, E. A., 185, 341, 443, 452
Busolt, G., 54, 204, 205, 206, 257–9, 295, 296, 298, 340

Calvin, 502–3, 508, 512, 521
Cambridge expedition, 150, 155, 173, 328, 437
Cambridge Natural History, 4
Cannibalism, 239, 240–2
  and human sacrifice, 408, 409, 464
Canon law, 113, 144, 148, 213 seq., 262, 263, 508, 509, 510, 513, 514, 520–2, 581, 582
Carpenter, Dr. J. E., 490, 495
Caste, 57, 271, 272, 474
  Criticism of, 292
  in India, 290–2, 344
  in modern civilization, 309, 315
  in the uncivilized world, 274
Categories, 545, 618–20
Catlin, G., 29, 167, 236, 238, 239, 339, 340, 341, 392
Charity, 341, 463, 466, 467
Chastity, 172–4, 192, 193, 243, 481
Children, 238, 250, 257, 260, 338–9
China—
  Ethical conceptions, 58, 86–7, 109, 127, 133, 253 seq., Part II, ch. v.
  Family, 193–7
  Law and custom, 293, 343
  Magical conceptions, 383
  Religious conceptions, 368, 379
Christianity, 221, 262–4, 279, 301 seq., 312, 313, 348
  See Monotheism.
Church—
  and state, 568
  and the world, 519 seq.
  Influence of, 213 seq., 262, 301
  Primitive, 519
Cicero, 210
Citizenship, Principle of, 43, 60 seq., 559, 560
Clan system, 47–9, 51
Class distinctions, Part I, ch. vii,
  in modern Europe, 318 seq., 543
Classification—
  Difficulties of, 31 seq.
  of the simpler peoples, 38 seq.
Codes, multiplicity of, 23, 24
Codrington, 163, 167, 345, 398, 421, 434
Common good, 539
Communism, 322 seq.
Comparative ethics—
  Difficulties of, 25 seq.
  Method of, 25 seq.
  Scope of, 18, 19, 23–5, 35, 36
Compurgation, 115
Concubinage, 133, 180, 182, 185, 194, 198, 203, 205, 207
Confession, 441, 474
Confucius, 127, 517, 528–35, 543
Conquered communities, treatment of, 260, 261
Conscience, 571
Conservatism, 493
Constantine, 216, 523
Contract, in early law, 333–4
Contract labour, 314
Cornish, C., 6
Council of Trent, 508, 510, 511, 514
Criticism, 545, 546
  Philosophic, 620, 621
Curr, E. M., 75, 95, 440
Curses, magical effect of, 421, 42
Custom, 1, 539, 624, 630, 631
  and habit, 12
  and law, 61
  and tradition 12
  Factors in growth of, 12–14, 30, 402, 445, 616, 617
  Sanctity of, among primitive man, 17, 18
  Penalty for breach of, 420 seq
Cynics, 562

Dalton, E., 170, 394, 395, 432, 43
Danks, 143
Dareste, R., 86, 202, 281
Debt, punishment of, 75, 82
De Groot, J. J. H., 196, 368, 369, 370, 371, 372, 383, 485, 538

Deity, conception of, 248–50, 260
  See Monotheism and Polytheism.
Democracy, 66
Demons, 412, 464–7
Desire, 598–600, 615–16
Determinism, 503–5
Deuteronomy, 198, 199, 236, 250, 251, 288, 345, 490, 493
Dhammapada, 483–5
Dicey, Prof., 608
Dill, Prof., 211, 348
Diodorus, 183, 283, 286, 319, 378
Dionysius, 206, 207
Divorce. *See* Marriage.
Dorsey, J. A., 79, 99, 157, 326, 388, 391
Douglas, R. K., 194, 195, 196, 379, 539
Driver, S. R., 199, 490
Dualism, 470
Duel, Judicial, 59, 112, 113, 116
  Non-judicial, 113
  of abuse, 96
Duncker, M., 128, 188, 252, 253, 291
Durkheim, Prof., 400, 401
Duty, 570
Dyaks, 26, 376

Ecclesiasticus, Book of, 200, 289
Egoism, 578
Egyptians, 144
  Ethical conceptions, 28, 58, 341–3, 453–8
  Family, 183 seq.
  Law and custom, 150, 179, 282–6, 319
  Religious conceptions, 369, 406–12, 438, 441, 443–4
  Warfare among, 247–8
Ellis, A. B., 83, 143, 151, 157, 166, 240, 273, 402, 403, 425, 431
Elmira system, 127
Endogamy, 142 seq.
England, 508
  Family in, 228
  Justice in Anglo-Saxon, 82, 86
  Justice in mediæval, 76 seq., 86, 101, 118 seq., 121 seq., 320–1, 350
  Modern law, 123 seq., 144, 325, 351
Epictetus, 517, 564, 565
Erinnys, 369, 427–9
Erman, A., 187, 248, 283, 284, 342
Esmein, A., 120

Ethical conceptions—
  Development of, 618 seq.
  Difficulties of comparing, 27, 28
  in early culture, 446, 623–5
  in oriental civilization, 449–58, 462–9
  Rationalist, 544
Ethical consciousness, 449
Ethics as regulation of life, 613
Evangelicals, 125
Evil, 495, 496, 499–503, 634
Evolution, self-conscious, 637
Exodus, Book of, 287, 320, 345, 491
Exogamy, 50, 51, 135, 142 seq.
Experience, 385–7
  Animals learning by, 613 seq.
  Correlation of, 613 seq.
Ezekiel, 494, 496

Factory Acts, 335
Faith, 508, 513–15, 626
Family—
  Joint, 49
  Patriarchal, 49, 53. *See* Father-right; Mother-right; Marriage.
Farnell, L. R., 413, 429, 430
Father-right, 47, 51, 143, 159 seq., 168, 178–9
Feudalism, 56, 57
Flinders Petrie, W. M., 41, 186, 247, 248, 283, 455–7
Food, magic influence on, 381
Forgiveness, 483, 484, 518, 533, 534, 625
Fornication, 185, 477
  forbidden, 201, 213, 215
  Punishment of, 194, 209, 216, 222
Fowle, T. W., 350, 351
France—
  The family, 224, 225, 226
  Law and custom, 87, 120–2, 126, 306, 307, 310
Franciscus à Victoria, 263, 267
Frazer, J. G., 242, 367, 368, 372, 376, 377, 378, 381, 383, 403, 404, 439–41
Free-will, 500 seq.
French Revolution, 585, 586
Friedländer, L., 211, 348
Friends, Society of, 125, 267, 313, 523
Future judgment, 626
  life, 431 seq., 441, 468, 47

Gaius, 209
Gambling, 538

Gardiner, 108, 109, 183–4, 187, 411, 455, 458
Gautama, 192
General will, 61
Genesis, Book of, 197, 198, 490
Germans, 76, 91, 101, 112, 122, 142, 161, 165, 178, 213, 218, 220, 226, 300, 311, 340
Girard, P. F., 52, 207, 209, 210, 298, 299, 321, 330, 333
Goddard, P. E., 95
Godden, Gertrude, 79, 142, 151, 242, 243, 274, 319, 394
Good, conception of, 19, 544, 551 seq.
  affected by non-moral causes, 19
  affected by religious ideas, 19, 20
  affected by social changes, 20–22
  The common, 60, 62, 63
Government, 60, 61, 67, 68
  Duties of, 539–40
Grace, 509, 513
Gratian. *See* Canon law.
Great Man, the, 530, 536
Great Spirit, 393
Greek Church, 225
Greeks, ancient, 111, 135, 160, 346–7
  Ethical conceptions, 548
  Family among, 203–6
  Law and custom of, 256–8, 295–8
  Magical conceptions of, 421
  Philosophy of, 258, 259, 299, 417, 544 seq., 569, 575, 601, 604
  Religious conceptions of, 373, 415–17, 427–30, 438
Griffith, F. Ll., 183–7, 286, 343, 412, 444, 452, 453, 455–6
Grote, G., 135
Grotius, 259–64, 267, 302, 582
Group—
  Marriage. *See* Marriage.
  Morality, Part I, chs. vi, vii, 355, 547, 623–5
  Organization and government, 45 seq.
  Relationship, 47

Hagen, B., 43, 44, 95, 140, 436
Hall, W. E., 263
Hammurabi, 48, 74, 77, 82, 86, 109, 180–3, 281, 287, 321, 327
Happiness, 555, 563, 571, 572, 580, 597, 600
Harnack, 498, 507, 509, 510, 511
Harrison, J. E., 415–17, 421, 428
Hartley, 572
Hawes, 41
Head-hunting, 26, 242–3, 245
Hebrew Prophets, 251, 252, 345, 490 seq.
Hebrews—
  Ethical development of, 492 seq.
  Family life, 197–200
  Law and custom, 84–5, 88, 90, 101, 118, 144, 148, 155, 167, 250–2, 286–9, 320, 330, 345
  Religious development, 90, 250–2, 489 seq.
Hedonism, 562
Hegel, 590, 594, 595
Heraclitus, 549
Heredity—
  Effect upon behaviour, 3, 5, 6, 7, 8, 613–14, 635, 636
  and character, 10–12
  in man, 11
Herodotus, 65, 138, 204, 235, 257–8, 295, 430
Hesiod, 346
Hobbes, 571, 584
Homer, 29, 203, 256, 295
Homicide, 75, 76, 84–6, 94, 99, 107. 110, 111
Hospitality, 236, 338–9, 342, 344
Howard, G. E., 124, 125, 134, 148, 149, 150, 151, 153, 212, 213, 214, 215, 217, 222, 223, 230
Howitt, A. W., 44–6, 74–5, 90–1, 95, 97, 103, 157, 174, 325. 391–2, 395–6, 425, 436
Hughes, T. P., 200, 201, 293–4
Humanitarianism, 609–612
Humanity, 268, 316, 317, 356–7, 360, 364, 543, 590 seq., 606–8, 626–7
Human sacrifice, 240, 242, 247, 274
Hume, 572
Humility, 483, 566
Huth, A. H., 144, 145

Idealism, 527 seq., 574, 626
Ideals, varying effect of, upon conduct, 23–5
Ihering, R. von, 52, 91
Impulse and desire, 9, 598–600, 614–15
India—
  Family life, 48, 49, 135, 142, 143, 161, 188–93
  Law and custom, 252–3, 289–93, 344
  Religious conceptions, 461–4, 470 seq.

Individual and society, 569, 570
Indulgences, 511
Infanticide, 206, 218, 339, 340
Ingram, J. K., 300, 310–14
Inquest, 119
Instinct, 4–6, 145–6
  in man, 11, 15
Intelligence, growth of, 614 seq.
  Human, 616
International law, 257, 264, 265
  right, 266–9
Intuitionism, 572
Isaiah, Book of, 252, 493–5
Islam, 200–2, 293–5

Japan, 86, 87, 119, 133, 168
Jastrow, M., 412–15, 442
Jenks, E., 118
Jeremiah, Book of, 288, 493, 496
Jerome, 520
Jeune, Sir F., 209
Jevons, F. B., 373, 398, 421
Johns, C. H. W., 180, 181
Joint family, 79
Judges, Book of, 251, 489
Justice, phases in the development of, 70 seq., 550, 552 seq.
  Blood-feud, the, 73 seq., 81 seq., 130
  Composition, 75 seq., 130
  Early procedure, 114 seq.
  Execution of sentence, 118
  Growth of public, 88 seq., 354–5
  Influence of Central Authority, 94, 97, 101
  Influence of rank, 77, 78
  inside the clan, 79, 80, 103
  inside the family, 79
  in the modern state, 124 seq.
  Outside the clan, 79, 80, 103
  Period of severity, 122–4
  Principle of collective responsibility, 81–3, 87, 88
Justinian, 523

Kant, 573 seq.
Kidd, B., 595
Kings, Book of, 251, 286, 489
Kingsley, Mary, 370, 371
Kinship—
  Affinity as basis of, 143
  Classificatory, 137, 143
  Society based on, 43 seq., 53–4
Kohler, J., 78, 82, 89, 90, 133, 138, 139, 149, 150, 163, 165, 167, 168, 171, 175, 180, 326
Kohler and Peiser, 48, 182, 183
Koran, 202, 261, 339, 346, 497, 508
Kovalevsky, M., 138, 330
Kropotkin, Prince, 416
Kuenen, 491

Labourer, position of, in England, 308–10, 349–51
La Cour and Appel, 41
Laffitte, P., 343
Lao-Tsze, 475, 485 seq., 516
Law, 61, 65
  Basis of, 550, 551. *See* Justice.
Lecky, W. E. H., 221, 523
Legge, G., 194, 253, 293, 343, 538
Leist, B. W., 203, 204, 425, 428, 431
Letourneau, C., 134, 151, 157, 170, 173, 204, 235, 242, 245, 246, 259, 260, 273–5, 279, 280, 300
Levirate, The, 157, 193
Leviticus, Book of, 199, 288, 345
Liberty, 67, 68, 358–60, 586 seq.
Life, sanctity of, 475, 480
Lloyd-Morgan, C., 2, 6
Loch, C. S., 345–51
Locke, 583
Luther, 508, 512
Lyall, A., 373

Magic, 380–7, 397, 408, 409
  and morals, 243, 318, 420–3, 445, 467, 473
  and mysticism, 485, 486
  and religion, 397–8, 401, 424, 439, 444, 445, 468, 491, 492
Maine, H. S., 161, 333–4
Malays, 47–9, 78, 81, 151, 166, 168, 172, 368
Man, E. H., 71, 143, 239, 340
Mana, 242, 387
Manu, 48, 52, 109, 161, 189–93, 253, 290, 291, 334, 344, 364, 472, 474–6
Marcus Aurelius, 517, 568
Marett, R. R., 374, 388, 389
Marriage, by capture, 152, 153, 163, 164, 189
  by consent, 152, 156–8, 190, 194, 209, 213
  by consideration rendered, 152, 154, 164
  by exchange, 156
  by go-betweens, 194
  by purchase, 154, 157, 165, 180, 188, 189, 197
  by service, 155, 197
  contracts, 182, 183, 185

Marriage—
  Dissolution of (Law of divorce),
    in European civilization, 204, 207, 208, 210, 211, 214–17, 222, 225–31
    in oriental civilization, 180–1, 184, 191, 195, 197, 198–9, 200
    in uncivilized world, 147 seq., 172, 178
    under varying conditions, 147 seq., 225–31
  Group, 135–8
  Law and custom relating to, Part I, chs. iv, v.
  Monogamous, 133, 140, 141
  Polyandrous, 134, 135, 141, 176, 178
  Polygamous, 133, 139, 140, 141, 172, 178, 181, 185, 188, 194, 200, 201
  Polygynous, 133
  Promiscuous, 138, 178
  Questions concerning, 133
  Religious conception of, 159
  Restrictions on, 52, 53, 142 seq.
  Varying relations of husband and wife, 159, 167 seq., 179, 183, 188, 195–7, 199–200, 203, 208–10, 218 seq.
Married Women's Property Acts, 223
Martin, R., 43, 44, 140, 391
Maspero, G., 58, 185, 282–4, 318, 342, 406–10, 420
Materialism, 493
Matriarchy, 47, 159, 187
Max Müller, W., 144, 185, 187, 283
Mayne, J. D., 48, 49, 52, 135, 161, 189, 327, 330
Mazdaism, 364, 374, 467, 468
Meissner, B., 48, 182, 280, 281, 282
Melanesians, 383, 387, 420
Mencius, 255–6, 531, 535–41
Middle Ages, 112, 113, 120, 121, 212 seq., 301–8, 310, 311
  Influence of Church in, 112, 120, 128, 131, 144, 568
Mill, J., 572
Mill, John Stuart, 572, 589
Modern ethics, 568 seq.
Mohammed, 80, 200–2
Mohammedanism, 261–2, 278–9, 498, 503, 508, 515
Mohammedan law, 82, 86, 110, 133, 144
Mommsen, T., 52, 112, 261
Monogamy, 524
  in early civilization, 185
  in European civilization, 215
  in oriental civilization, 198
  in uncivilized world, 133, 140–1
Monotheism—
  Approaches to, 489
  Conception of the deity, 496 seq.
  Effect of ethical teaching, 522
  Ethical, 496 seq.
  Ethical conceptions of, 497, 506 seq., 515 seq.
  exclusive salvation, 508
  in early Judaism, 489 seq.
  Tendency to, in early religions, 391–6, 409–12, 415, 460, 463, 489 seq.
Montefiore, C. G., 200, 489, 491, 495, 496
Morality—
  Conditions of advance in, 18, 31
  Instinctive elements in, 14
  Relation to sympathy, 15
  Moral sanctions in early thought, 419 seq., 508, 547
Moral standard, 31, 558 seq.
  affected by reciprocity, 16
  affected by self-interest, 16
  based on human character, 14–16
  Fundamental uniformity of, 28
  related to social conditions, 16–18, 22, 31, 33 seq.
  Varying effectiveness of, 23–25
Morgan, L. H., 49, 50, 78, 141, 170, 326, 338, 339, 441
Morice, 49, 323, 329
Mother, respect for, 186
Mother-right, 47, 49, 51, 159–61, 167 seq., 179, 187, 197
Muir, T., 188, 290, 292, 462, 463, 464
Mysticism, 416, 417, 470–3, 485 seq.
Myth-making, 389 seq.

Natural rights, 584 seq.
Natural selection, 5
Nature, 518, 550
  as foundation of virtue, 530, 536–8, 542, 553 seq., 558, 562, 569, 571, 583
  Law of, 264, 562 seq., 571, 581 seq., 627
Nationalism, 362
Niyoga, custom of, 193
Non-resistance, 262, 267
North American Indians, 49, 50, 79, 89, 90, 92, 134, 139, 141, 142,

149, 157, 167, 169, 170, 172, 175, 236, 238, 241, 242, 245, 275, 319, 326, 338–41, 376, 390, 392, 394, 420, 424, 432, 434, 441
Numbers, Book of, 199, 250, 330, 491

Oath, 115, 116, 131
Obligation, 555, 575 seq., 623, 628
Old, W. G., 485–7
Omnipotence, 499–506, 627
Oppert, O., 282
Ordeals, 97, 116, 117
Owen, R., 214

Paine, Tom, 584–6
Palmer, R. H., 81, 417, 498, 508
Pantheism, 410, 459, 498
Parents, duty to, 538,
  Rights of, 183
Parker, Mrs. K. L., 117, 150, 156, 395, 434
Paternity, 163
Patriarchate, 47, 149, 159, 183, 188, 195, 197, 203, 206, 212, 462
Payne, E. J., 32, 342, 370, 438
Peace, Ideal of, 252 seq., 267, 495
Peasantry, in modern Europe, 311
Pelagius, 500
Penance, 509 seq.
Perfection, 483, 485
Personality, 193, 358 seq., 560
  Transference of, 238
Pharisaism, 423
Philosophic life, 560, 561
Pike, L. O., 124
Plato, 16, 205, 258, 296, 517, 552 seq., 556, 557, 568
Pleasure and pain, 8, 572, 596, 599, 600
Pollock and Maitland, 74, 76, 77, 86, 101, 115, 119, 121, 128, 218, 219, 302, 307, 319, 320, 520
Polyandry, 134, 135, 205
Polygamy, 33, 132–4, 139–41, 178, 181, 182, 185, 188, 192, 198, 200, 201, 213
  in European civilization, 215
Polytheism, 402–6, 409, 416–18, 428–30, 459, 490
Poor—
  in classical civilizations, 346–8
  in Middle Ages, 348–50
  in modern Europe, 350–3
  in oriental civilizations, 341–6
Popular Sovereignty, 360
Post, A. H., 48, 52, 74, 76, 78, 79, 81, 82, 83, 84, 86, 87, 101, 116, 119, 133, 142, 148, 149, 150, 151, 155, 157, 160, 165, 166, 167, 173–5, 239, 245, 273, 279, 319, 326, 333, 424
Powell, J. W., 48, 103
Powers, S., 91, 139, 149, 175, 239, 394, 435
Prayer, 413–15, 426, 442, 443, 450–2, 468
Predestination, 500 seq.
Primitive thought, 27
Prisoners, treatment of, 237 seq.
Private judgment, 570
Progress, 30, 36, 634 seq.
Promiscuity, 133, 138
Property, Part I, ch. viii, 447, 522, 608
Protestantism, 144, 222. *See* Calvin and Luther.
Proverbs, Book of, 198
Ptah-Hotep, 185, 186, 527
Punishment, by branding, 126
  by imprisonment, 126, 127
  by mutilation, 128
  by transportation, 126
  Capital, 126-8, 535
  Eternal, 500 seq.
  Future, 431 seq., 626
  Growth of severity in, 122–4
  Public, 89, 90, 100, 104, seq.
  Reform of, in modern times, 124 seq.
  Rational conception of, 124 seq.
Purification, 476
Purpose, 2–3

Quarter, 244, 245, 249, 252, 253, 258, 260, 262
  Refused, 237, 239 seq., 249, 253, 256, 259, 262

Ransom, 257
Rationalism, 572 seq., 607, 611, 626–7
Rationalists, 125
Ratzel, 26, 151, 167, 172, 274, 275
Reality, 546, 596, 622
Reason and desire, 572 seq.
Reclus, E., 134, 135, 144, 151, 171, 234, 236, 244, 275, 340, 341, 376, 377, 419, 421, 431, 432
Reflex action, 2, 3, 613
Regicide, 541
Relativity, 606–9
Religion, 398, 459, 460
  as ground of social union, 43

Religion—
  Development of, 619 seq.
  Relation to ethics, 591 seq.
    See Animism, Polytheism, Monotheism, etc.
Remorse, 422, 423
Repentance, 474, 492
Responsibility, 83 seq.
  Collective, 81, 82
  Individual, 128, 129
  vicarious, 81
Retaliation. *See* Justice.
Retribution, 469
Rhys Davids, T. W., 475, 480–3
Rightlessness, 273, 277, 285, 286, 295, 297, 299
Rights—
  Gradation of, 272, 277–80, 291, 301, 305, 309,
  in modern state, 130, 131
  in primitive and advanced thought, 129, 60
  Personal, 60 seq.
Robertson Smith, 118, 345, 444
Roman Jurists, 299, 566
Rome—
  Early conditions, 59, 259–61
  Family life, 148, 178, 206–12, 340
  Government, 90, 110, 122
  Law and custom, 298–300, 321, 330, 347–8
  Religions conceptions, 373, 429
Roth, W. E., 47, 98, 103, 107, 166, 395, 436
Roumania, 225
Rousseau, 584, 585
Russia, 225, 311

Sacrifice, 409, 444, 464, 492
Samuel, Book of, 489, 491
Satan, 496
Saussaye, P. de la, 373, 393–4, 404
Savages—
  How far comparable to primitive men, 25
  Moral qualities of, 25, 26, 27
Sayce, A. H., 248, 249, 342
Scandinavia, 227
Scape-goat, 439
Schmidt, 144, 150, 163, 165, 245, 275, 340
Schoolcraft, 92, 141, 149, 159, 238, 243, 275, 326, 339–41, 394, 420
Schoolcraft-Drake, 149, 239, 243, 319, 339, 394, 420
Schröder, R., 77, 91, 101, 115, 120, 122, 301–3, 305, 306, 333, 340
Science, 633
Scotland, 228
Self, 470, 471
  assertion, 515, 624
  denial, 524
  development, 561, 629
  interest, 16
  sacrifice, 570
  suppression, 561, 615, 629
Seligmann, C. G., 43, 44, 140, 171, 324, 396, 400, 425, 437, 438
Serfdom, 57, 271, 278, 279, 283, 284, 296, 297, 300, 304 seq., 350
Servia, 225
She-King, 194–7, 253, 254, 293, 343
Shoo-King, 254, 343
Sidgwick, A., 428
Sidgwick, H., 65
"Simpler Peoples," 39, 54, 76, 78, 83, 105, 117, 153, 162, 166, 171, 174, 175, 177, 234, 238, 244, 275, 329, 340
Sin, 507
  purging, 439, 442
Slavery, 122
  Abolition of, 312 seq.
  and forced labour, 314
  Conditions of, 57, 59, 66, 244, 272
  Criticism of, 229
  for debt, 277, 280, 281, 296, 299
  General conception of, 271, 272
  Grades of, 277, 278
  Hereditary, 277
  in Oriental civilization, 280–95
  in uncivilized world, 272–80
  Modern Negro, 312–14
  of co-religionists forbidden, 293, 294
  Question of, 258–9
Slaves—
  Domestic and foreign, 286–9
  Duty to, 344
  Manumission of, encouraged, 294, 303, 310
  Position of, in England, 308
  Prohibition to recruit from captives, 261–3, 301, 302
  Protection of, 198, 277–81, 286–9, 293, 296
  recruited from captives, 239, 244 seq., 250, 256, 257, 260, 262, 273, 274, 275, 277, 282, 295, 296
Slave-trade, 280, 293, 302,
  Abolition of, 313, 314
Social changes, 20–2
Socialists, 522
Social organization, 43 seq.

Social reform, 493, 633
Socrates, 544, 551, 555
Sophists, 549, 550
Sorcerers, Punishment of, 81, 89
Soul, 317 seq.
Spencer, H., 168
Spencer and Gillen, Messrs., 45, 46, 75, 86, 89, 136, 157, 163, 164, 175, 235, 241, 322, 370, 377, 381, 389–91, 393, 419, 420, 425
Spirit, 471
  in evolution, 506, 594 seq., 621, 622, 629 seq.
Spirits, 278, 279, 391–6, 424, 461, 464
  appeasing, 444
  punish immoral actions, 440
Spiritual religion, 487, 488, 628
Starcke, C. M., 144, 173
State, 60 seq. 88
  The City, 64 seq.
  The modern, 67 seq., 130, 131, 357 seq.
  Theory of, 586 seq.
Steinmetz, M., 81, 88, 167, 327
Stoics, 303, 562 seq.
Supernatural, 518
Sutherland, A., 88
Swanton, J. R., 80, 322, 329, 434
Sympathy, 15

Taboo, 55, 88 seq., 146, 318, 378, 387, 420–21, 423, 440, 446
Tacitus, 83, 259, 326
Taoism, 460, 485 seq.
Taylor, 120, 602
Theft, punishment of, 76, 319 seq.
Thomas Aquinas, 349, 498
Thucydides, 256–8, 296, 550
Torture, 121–3, 238, 239, 249, 253
Totemism, 45, 46, 143, 144, 377, 382, 397, 401
Trade guilds, 348
Trade unionism, 361
Tradition, 12–14, 616, 617, 635 seq.
Traditional morality, 547, 549, 617, 623, 624
Transmigration, 369, 474
Treaties, 248
Tribal union, 49 seq.
Tribute, 251
Truth, 466, 476
Tylor, E. B., 82, 143, 153, 164, 318, 367–9, 371, 376, 392, 426, 431, 432

Ulpian, 209, 210, 299
United States, 229, 230
Universalism, 261, 303, 316, 495, 517, 543, 564
Upanishads, 344, 470–73
Usury, 345, 346, 477
Utilitarianism, 125, 572, 587 seq.

Validity, 576, 577
Vedas, 252, 462, 463, 470
Vengeance, 72 seq., 309
Vice, 556–7
Vineya texts, 482, 484
Vinogradoff, Prof., 52, 161, 216, 303, 306, 307, 308
Viollet, P., 209, 214–16, 218, 221, 224, 301, 302, 312, 313, 330
Virtue for its own sake, 485, 528, 551 seq.

Wace and Buchheim, 508
Wailing for the dead, 368
Waitz, G., 76, 83, 213
Waitz, T., 45, 75, 78, 81, 83, 142, 151, 166–8, 170, 173, 235–7, 239–46, 273–5, 281, 319, 320, 338, 431, 438, 440, 441
Wallace, A. R., 5
War, 234 seq.
  Chivalry in, 236, 253, 264
  Ethics of, 476
  in classical civilization, 256–61
  in early civilization, 246 seq.
  in uncivilized world, 72, 234 seq.
  in Western Europe, 262 seq.
  Just and unjust, 262, 276, 267
  unknown among some savages, 234
Wergild, 77, 78, 300
Westermarck, E., 52, 87, 135, 144, 148, 155, 166, 167, 171–6, 263, 338, 340, 419
Widow, position of, 188, 195
Wilamowitz-Möllendorf, U, von, 203, 205, 297, 330
Wilcox, W. F., 230
Will, 599–600, 616
Wines, F. H., 125–7
Wisdom literature, 495
Wissowa, 404, 429
Witchcraft, 84, 89, 117, 409, 413
Wollstonecraft, Mary, 223
Women, 476, 481, 484, 485
  Attitude to, 199, 200, 202, 203, 205, 211, 212, 221, 222, 232
  Equality with men, 186–8
  Position of, 31, 132 seq., 203 seq., 355
  among uncivilized races, 71, 167 seq.

Women—
  in English law, 219 seq.
  in oriental civilization, 179 seq., 183–8, 190, 191, 195–6, 199–202
  in relation to marriage-law, 132, 159 seq.
  Rights of unmarried, in Middle Ages, 219
  Rights of unmarried, in modern period, 220
  Treatment of, in war, 237, 243–4, 248, 250, 252, 256–7, 259

Xenophon, 206, 257

Yahveh, 405, 489 seq.

Zechariah, 495
Zend Avesta, 86, 464–9
Zeno, 549
Zeus, 403–5, 416
Zimmern, A. E., 205, 206, 207
Zimmern, H., 442, 450
Zulus, 371

BINDING ... FEB 22 1974

PLEASE DO NOT REMOVE
CARDS OR SLIPS FROM THIS POCKET

UNIVERSITY OF TORONTO LIBRARY

BJ
1311
H6
1920

Hobhouse, Leonard Trelawney
Morals in evolution
5th ed.